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**THE
TORRENS AUSTRALASIAN
DIGEST.**

1860—1898.



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Received *March 30, 1905.*

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THE TORRENS AUSTRALASIAN DIGEST

BEING A DIGEST OF CASES UNDER THE "REAL PROPERTY"
(OR "LAND TRANSFER") ACTS DECIDED BY THE SUPREME
COURTS OF THE AUSTRALASIAN COLONIES

1860—1898

TOGETHER WITH COMPARATIVE TABLES OF THOSE ACTS.

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P R E F A C E.

THE object of the present publication is to make the whole of the cases decided under the provisions of those Statutes which in some of these Colonies are known as the "Real Property" Acts; and in others as the "Land Transfer" or "Transfer of Land" Acts, readily available to practitioners in each Colony. The First Part, containing the Digest proper, is believed to comprehend all reported cases which can be so classed; and the advantages which it is expected to afford are apparent, and have been long desired. Great pains have been taken to secure facility of reference by means of cross references and sub-headings.

The Appendix of Comparative Tables is intended to assist the practitioner in finding the correspondence of sections in force in the different Colonies, and the consequent applicability of any decision to Colonies other than that in which it was pronounced. It is also hoped that by the use of the Tables the draftsman of an Amending Bill may be enabled to embody therein such provisions already in existence elsewhere as may seem likely to recommend themselves to the judgment of the legislature owing to their previous successful operation.

A few cases which were omitted in the body of the Digest are added at the end, and one case dealing with Estates Tail will be found under the heading "Tail."

JUNE, 1899.

ABBREVIATIONS OF NAMES OF REPORTS.

A.C. or App. Cas.	Appeal Cases decided by the Privy Council— —from 1875
A.J.R....	...	...	Australian Jurist Reports, Victoria (5 Vols.) 1870-1874
A.L.R....	...	..	Argus Law Reports (Victoria)—from 1895
A.L.R. (C.N.)..	...	...	Argus Law Reports (Current Notes)—from 1895
A.L.T....	...	...	Australian Law Times (Victoria)—from 1879
B.C.R. . .	...	...	<i>Brisbane Courier</i> (Newspaper) Reports
Badger...	...	...	Badger's Digest of Cases (1888)
Knox ...	...	...	Knox's Reports (N.S.W.) (1 Vol.) 1877
L.R.P.C.	...	...	Law Reports Privy Council (1865-1874)
N.C. ...	...	...	Notes of Cases (Victoria), printed in Vol. I. of A.J.R. (1870-1871)
N.S.W.L.R.	...	...	New South Wales Law Reports—from 1880
N.Z.J.R.	...	...	New Zealand Jurist Reports (2 Vols.) 1873- 1875
N.Z.J.R. (N.S.)	...	...	New Zealand Jurist Reports (New Series) 3 Vols. 1875-1878
N.Z.L.R.	...	...	New Zealand Law Reports—from 1883
N.Z.L.R. (C.A.)	...	...	New Zealand Law Reports (Court of Appeal) 5 Vols., 1883-1887
N.Z.L.R. (S.C.)	...	...	New Zealand Law Reports (Supreme Court) 5 Vols., 1883-1887
Q.L.J. ....	...	...	Queensland Law Journal—from 1881
Q.L.J. (N.C.)	...	...	Queensland Law Journal (Notes of Cases) —from 1896
1 Q.L.J. (Suppl.).	...	...	Supplement to Vol I. Q.L.J., containing cases decided in 1879
Q.L.R....	...	...	Queensland Law Reports (1876-1878)
S.A.L.R. (24 Vols.)	...	...	South Australian Law Reports (1867-1891)
S.A. Reg.	...	..	<i>South Australian Register</i> (Newspaper)
V.L.R....	...	...	Victorian Law Reports—from 1875
V.R. ...	...	...	Victorian Reports (8 Vols.) 1870-1872
W.N. (N.S.W.)	...	...	Weekly Notes (New South Wales)—from 1884
W. & W.	...	...	Wyatt & Webb (2 Vols.) 1861-1863
W.W. & A'B.	...	...	Wyatt, Webb & A'Beckett (6 Vols.) 1864-1869
S.C.R. (N.S.W.)	...	...	Supreme Court Reports (New South Wales) (14 Vols.) 1863-1876
S.C.R. (Q.)	Supreme Court Reports (Queensland)(1 Vol.) 1860-1868
Tas. Dig.	Hore's Tasmanian Digest (1856-1896)

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[S.A., Act 1861, s. 134.]—"Adversely in actual possession."—The words "adversely in actual occupation" in s. 134 of *The Real Property Act*, 1861, mean adversely to the certificate of title.

See FRAUD.

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1. WHAT CONSTITUTES. (*See, also*, 3, *infra*).
2. APPLICATION TO BRING LAND UNDER ACT.
 - (a) *By Adverse Possessor*.
 - (b) *In Fraud of Adverse Possessor*. (*See also* BOUNDARIES, FRAUD).
3. DEFENCE IN ACTION BY REGISTERED PROPRIETOR. (*See also* 1, *infra*).

1. WHAT CONSTITUTES ADVERSE POSSESSION. (*See also* 3, *infra*).

[VICTORIA.]—*Evidence—Trespass—Interruption of possession—Question for jury*.—Where, in an action of ejectment, plaintiff relied upon a

certificate of title and defendant upon adverse possession for more than fifteen years, and it was proved that S., a tenant of the plaintiff's, had used the land for fourteen years before action brought, the Court held that S.'s use must be proved to be in assertion of a right and not as a trespass, and the jury having found for defendant, the Court refused to interfere in what was properly a question for the jury. *BICKNELL v. HEYMANSON*, 3 A.J.R. 22. (Full Court.)

[N.Z., Act of 1885, ss. 55, 67.]—**Evidence—Trespass.**—An alleged taking possession of land by claimants without ousting a tenant who holds it from the owner, is merely a trespass, and not an adverse possession sufficient to invalidate a certificate of title under the Acts. *COLEMAN v. RIRIA PUWHANGA*, N.Z.L.R. 4 S.C. 230.

[VICTORIA.]—**Evidence—Payment of rates.**—The voluntary payment of rates for land by a person who is not the true owner is, in connection with the question of adverse possession, conclusive to show that the true owner is not in actual possession and is strong evidence that the person claiming to have been in actual occupation, and who has paid such rates, was not committing mere casual acts of trespass, but had a deliberate purpose to create title in himself. *BANK OF VICTORIA v. FORBES*, 13 V.L.R. 760, 9 A.L.T. 167.

[N.S.W., Act of 1862.]—**Occupation for temporary purposes.**—Plaintiff, the caveator in an issue under the Real Property Act, proved that A., in 1840, used the land as a slaughter yard for twelve years. He abandoned it for two years, and then allowed B. to use it for several years as a garden. It was then used by C. as a garden until 1868, when it became vacant and remained vacant until the plaintiff took possession. The defendant, who had the documentary title, was never on the land until 1870. Verdict for defendant. *Held*, that the jury were justified in coming to the conclusion that the occupation by A. was for temporary purposes only, and was not such adverse possession as to set the statute running against the true owner. *M'GEARY v. BRODZIAK*, 3 N.S.W.L.R. 124. (Full Court.)

[N.S.W.]—**Legal representative—Crown grant—Next-of-kin.**—A person setting up a possessory title cannot rely on possession before the issue of the Crown grant. Where a person dies intestate, having been in adverse possession of land for less than twenty years, his next of kin cannot continue the possession so as to complete the twenty years, even though he was on the land at the time of the intestate's death, and remained there with the object of continuing such possession, and afterwards took out letters of administration. *In re WINTER; CAMPBELL AND OTHERS CAVEATORS*, 14 N.S.W.L.R. (L.) 389. (Full Court.)

[VICTORIA, Act of 1866, s. 49.]—**Discontinuance of Possession—Ejectment—Statute of Limitations—Onus of proof—Presumption arising from possession—Title on extinction of that of rightful owner—Act No. 213, ss. 18, 19, 43.**—A., the rightful owner of land, ceased to occupy it in 1865. B., or others through whom he claimed, then occupied it without title till 1878. Other trespassers, independent of both

A. and B., then occupied to 1885, when C. was in possession. B. in 1884 obtained a conveyance from the representatives of A., and procured a certificate of title to himself. In ejectment by B. against C., *Held* (*per totam curiam*, Higinbotham, Holroyd and Williams JJ.), that the title of A. and those claiming under him had been destroyed by the continuous acts of trespass for fifteen years from 1865; and that B.'s possessory title against C. was destroyed by the title during B.'s possession having been shown to have been in A. Possession raises a presumption of title and (while wholly unexplained) of seisin in fee, but that presumption may be rebutted by showing the title to have been during the possession of another than the possessor. *Semble* (*per Williams and Holroyd JJ.*, Higinbotham J. *dissentiente*), the proposition laid down in *Higinbotham v. Cairns* (11 V.L.R. 55, 7 A.L.T. 32), that discontinuance of possession of land by the rightful owner for fifteen years absolutely bars him of his right to recover possession against a trespasser at any subsequent time, is correct. *Per Higinbotham J.*: Discontinuance of the actual possession of land means not merely a cessation to occupy, but an abandonment of actual possession by the owner to some person or persons who, with the presumed knowledge of the owner, enter upon and maintain, for the full statutory period, the possession so abandoned. *Semble, per Williams J.*: In every action of ejectment, as the defendant's possession implies a dispossession of, or a discontinuance of possession by the owner, the onus is on the plaintiff to prove not only his title, but also the fact that he or some of those through whom he claims have been in possession within the statutory period before action. *Semble per Williams and Holroyd JJ.*: The Statute of Limitations having once begun to run against an owner of land by reason of possession in a trespasser, can only be stopped by the owner resuming possession or bringing ejectment. *Sed per Higinbotham J.* it ceases to run on the cessation of the trespass. *Per Higinbotham and Williams JJ.*: The possession of the person in occupation of land at the time the title of the true owner is extinguished by the operation of the Statute of Limitations prevails against that of all predecessors in occupation. *Per Holroyd J.*, the land reverts to the Crown, and such person has only a right to retain possession as against all others without better title. *MAY v. MARTIN*, 11 V.L.R. 562, 7 A.L.T. 130 (Full Court); *sed vide TRUSTEES, EXECUTORS, AND AGENCY CO., LTD. v. SHORT, infra*.

[VICTORIA.]—**Discontinuance of possession—Ejectment—Statute of Limitations—Title of occupant at end of 15 years.**—Under the Real Property Statute, 1864 (No 213) s. 18, as a defence to an action of ejectment it is enough to show (1) That fifteen years before action the person entitled to the land became dispossessed or discontinued possession of it; and (2) That he has never, within that period, resumed such possession as the statute contemplates. When these facts are shown, the person who is in occupation at the expiration of the fifteen years gets a good title under the statute. The onus of proving the above facts lies on the defendant. *HIGINBOTHAM v. CAIRNS*, 11 V.L.R. 555, 7 A.L.T. 32. *Sed vide TRUSTEES EXECUTORS AND AGENCY CO., LTD. v. SHORT, infra*.

[VICTORIA, Act of 1866, s. 49.]—Proof of duration of possession—*Paramount Title of Proprietor*—*Proviso in favour of adverse possessor*—*Action of ejectment*—*Onus on defendant*—Act No. 873.—The right to bring an action to recover possession of land under the "Transfer of Land Statute," where the defence set up is adverse possession, having regard to Act No. 873, first accrues not at the time of dispossession or discontinuance of possession of the plaintiff, but at the time of the actual possession of the defendant; and that being necessarily more within the knowledge of the defendant than of the plaintiff, the burden of proof is on the defendant. *SOLOMON v. JARVIS*, 12 V.L.R. 878, 8 A.L.T. 110.

[NOTE.—Act No. 873 is shown by the decision of the P.C. in *Trustees, &c., Co. v. Short* (13 App. Cas. 795), to be merely declaratory of the former law, and the Victorian cases of *May v. Martin* (11 V.L.R. 562), and *Heginhobham v. Cairns* (11 V.L.R. 555) must be taken to have been, in the view of the Judicial Committee, wrongly decided.—*Eds. R.P. Digest.*]

[N.S.W.]—Breach of continuity of adverse possession—*Limitation Act No. 3 of 1837*—*Act ceasing to run against lawful owner*.—The English Limitation Act, 3 and 4 Will. IV., c. 27, adopted by New South Wales Act No. 3 of 1837, does not continue to run against the rightful owner of land after an intruder has relinquished possession without acquiring title under the Act. Possession so abandoned leaves the rightful owner in the same position in all respects as he was before the intrusion took place. The Act applies, not to want of possession by the plaintiff, but to cases where he has been out of and another in possession for the prescribed time. *TRUSTEES, EXECUTORS, AND AGENCY CO. v. SHORT*, 13 A.C. 795.

[VICTORIA.]—Breach of continuity of adverse possession—*Constructive possession of the holder of title during statutory period*.—A. sold a block of land to B. in 1865. B. took possession, and by mistake fenced in 20 feet not sold or conveyed to him. In 1878, B. sold the block of land back to A., who, without taking formal or actual possession, sold it to C., who kept possession until 1887. In 1887 D., who had bought adjoining land from A., including this 20 feet improperly fenced in by B., brought an action of ejectment against C. to recover the 20 feet. C. claimed possession by reason of adverse possession for the statutory period. *Held*, that the continuity of the adverse possession of the 20 feet was broken by the land being restored to the rightful owner (A.) in 1878, and that, although A. never took actual or formal possession of the land, yet the fact of C. taking possession from him was such a recognition of his having a present right to the possession that the legal consequences were the same as if A. had actually entered into possession. *GOVAN v. DRAYTON*, 13 V.L.R. 342, 9 A.L.T. 25. (Full Court.)

[VICTORIA.]—Extinguishment of right of possession—*Action for recovery of possession of land*—*Limitation—Real Property Statute, 1864, No. 213, ss. 19, 31, 32, 43—Act No. 873*.—The Act No. 873 applies only to the cases mentioned in the first portion of s. 19 of *The Real Property Statute, 1864* (No. 213). It does not affect cases where the person bringing an action for the recovery of possession has a claim arising out of the death of another person. Hence, where the heir-

ess-at-law of an intestate, who had been under the disability of absence beyond the seas since she became entitled, brought an action for recovery of possession more than 30 years after she became entitled, *held*, that her right and title were extinguished. *PEARSON v. RUSSELL*, 14 V.L.R. 867, 10 A.L.T. 132. (Full Court.)

[VICTORIA.]—*Infancy—Tenant at will—Trustee of infant in possession—Recovery of land—Real Property Act, 1890 (No. 1136), s. 23*.—By s. 23 of Act No. 1136 it is provided that "When any person shall be in possession or in the receipt of the profits of any land, or in receipt of any rent as tenant at will, the right of the person entitled subject thereto, or of the person through whom he claims to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined." *Held*, that the operation of s. 23 of No. 1136 will not be prevented by the actual continuance of the tenancy, but that a written acknowledgment of title or the creation of a new tenancy is necessary to keep alive the owner's rights. Where A., an infant, puts B. into possession of his land, B. holds such land as the bailiff of A. during his infancy, and such possession as such bailiff excludes the operation of the Statute of Limitations with respect to an action to recover the land, as well as to the right to an account of rents. *FOLEY v. EGAN*, 17 V.L.R. 340.

2. APPLICATION TO BRING UNDER ACT.

(a) By Adverse Possessor.

[QUEENSLAND, Act 1861, ss. 19, 27.]—*Duty of Registrar*.—Where, on an application to bring land under the Act, the applicant's title arises from adverse possession, the Registrar of Titles should deal with the application in the ordinary way. He cannot refuse to inquire into the evidence in support of the application, though he may, if not satisfied with the evidence, refuse to go on with the application. *Ex parte O'NEILL*, 7 Q.L.J. 155. (Full Court.)

See also BRINGING LANDS UNDER ACT.

WARNER v. DOVE, (Tas.) Badger 37.

(b) In Fraud of Adverse Possessor.

See also BRINGING LAND UNDER ACT, FRAUD.

[S.A., Act 1861, s. 134, cf. Act 1885, s. 69 (6).]—*Certificate of Title—Ejectment*.—In an action of ejectment the plaintiff relied on a certificate of title. The defendants set up that they had been in possession of the land comprised in the certificate of title for more than 20 years. The issue put to the jury was whether the defendants had established the fact of such possession. *Held*, that there must be a new trial, on the ground that the real question at issue was not whether the defendants had been in possession for more than 20 years, but whether the certificate of title had not been obtained by fraud, the defendants having been in possession of the land at the time of the granting of the certificate of title, and the declaration on which the certificate of title was granted having falsely alleged that there was no person in adverse possession of the land. *WADHAM v. BUTTLE*, 13 S.A.L.R. 1. (Full Court.)

[S.A., Act 1861, s. 134, *cr.* Act 1885, s. 69 (6.)]—**Certificate of Title — Statute of Limitations — Absence from colony — Local Court judgment — Estoppel.**—In 1850, M. and Y., being owners of a piece of land, sold it to S., who left the colony in 1853, giving up possession of the land to W. (defendant's husband.) S. never paid for the land. In 1880 an application was made by M. to bring the land under the Real Property Act, and on 2nd April, 1881, a certificate of title was issued to him. On 17th October, 1882, M. transferred the land to plaintiff, the defendant before and at the time the certificate of title was issued being in possession of the land as devisee of W. In 1883 the plaintiff brought ejectment in the local Court of Redruth against the defendant, when verdict was given in the defendant's favor, subject to a case reserved for the opinion of the Supreme Court. No case was ever stated. On ejectment in the Supreme Court, *held*, that the certificate of title issued to M. was void as against the defendant under s. 134 of *The Real Property Act*, 1861; that absence from the colony was not a disability under the Statute of Limitations (No. 14 of 1867); and that the action in the local court did not operate as an estoppel against the plaintiff. *HARVEY v. WILLIAMS*, 18 S.A.L.R. 18. (Full Court.)

[VICTORIA, ACT OF 1866, s. 132.]—**Certificate of title—False representation—Order for cancellation.**—The Colonial Bank obtained a certificate of title as registered proprietor of certain land. The certificate of title was issued on a representation that R., who was grazing cattle on the land, was a mere trespasser. The bank brought an action of ejectment against R., who succeeded by relying on the Statute of Limitations. He then issued a summons under s. 132 for the cancellation of the certificate of title. *Held*, that the certificate of title was issued in error, and an order was made that it be delivered up to be cancelled. *In re TRANSFER OF LAND STATUTE, Ex parte RIGBY*, 9 V.L.R. (L.) 417, 5 A.L.T. 128.

3. DEFENCE IN ACTION BY REGISTERED PROPRIETOR. (See also 1 *supra*).

[VICTORIA, ACTS OF 1862, 1863, s. 26.]—**Ejectment—Defence—Adverse possession—Successive occupation—Certificate of title.**—In an action of ejectment, begun by a writ issued 13th April, 1866, the plaintiff launched his case by proving a certificate of title dated 7th April, 1866, which certified that he plaintiff "is now the proprietor of an estate in fee simple" in the land sued for, "subject nevertheless to such encumbrances and interests as are notified by memorandum underwritten." Underwritten was the following memorandum:—"Any rights subsisting under any adverse possession of the land." The defendant, in answer, showed that from 1849 downwards, the land was in the successive occupation of persons through whom the plaintiff did not claim, and the defendant did claim. The plaintiff, in reply, shewed that the persons through whom the defendant claimed had not the sole occupation—that no one person then had exclusive possession. *Held*, on motion to enter a verdict for the defendant, (1) That the certificate was a valid one under the Acts No. 140 and No. 180, s. 26, and the regulations issued under the later; (2) that in an action of ejectment such a certificate is only *prima facie* evidence of a plaintiff's title

and his right to the possession; and is met and defeated by evidence of possession for fifteen years by others than the plaintiff or those through whom he claims. *MURPHY v. MICHEL*, 4 W.W. & A'B. (L.) 13.

[VICTORIA, ACT OF 1866.]—**Ejectment—Defence—Adverse possession—Payment of rates.**—Plaintiff was registered proprietor, having brought the land under the Act. In an action of ejectment, the defendant relied on adverse possession. It was proved that in 1841 a person acting as owner of the land gave it in satisfaction of a debt to defendant, who then fenced it in. In 1847, defendant became insolvent, but beyond occasionally visiting the land, both before and after his insolvency, exercised no right of ownership. In 1851 nearly all the fencing had been removed, but one or two of the original posts were standing when the action was brought. About five years before action, defendant was rated for the land, and about three years before action paid the rates, evicted a person then in possession, and himself continued in possession. A verdict having been found for the defendant, *held*, that the evidence was not sufficient to maintain the verdict. *CHISHOLM v. CAPPER*, 6 W.W. & A'B. (L.) 225.

[VICTORIA, ACT OF 1866, s. 49.]—**Ejectment—Defence—Proprietor—Adverse possession—Burden of proof.**—In ejectment by a registered proprietor, the defendant set up a title by possession of fifteen years. He proved an enclosure by him, more than fifteen years before action brought, of part of the land sought to be recovered, and subsequent use of part of the land so enclosed. The fence, however, was only of a temporary nature, and was removed or destroyed shortly after its erection. *Held, per* Fellows J., that the words "adverse possession" in the Transfer of Land Statute (No. 501), s. 49, mean possession in fact as ostensible owner (as distinguished from clandestine trespass), and have not the technical meaning put upon them in the old cases; that a person who has so remained in possession for fifteen years, not being the real owner, acquires an absolute title *ipso facto*; that it is for a jury to determine whether the use relied upon of the land was a mere trespass, or was an assertion of a right; that it lies upon the party who sets up a claim under the Statute of Limitations to prove it; and that the defendant in ejectment by the registered owner having started the statute against the plaintiff, by showing that the plaintiff has been out of it, and the defendant and others in possession for fifteen years, it then lies upon the plaintiff to show that his title accrued within fifteen years, either to himself or to some person through whom he claims; also, that acts of ownership upon a part of the land may be evidence of possession of the whole. *Per* Stephen J.: That mere acts of possession or occupation do not constitute "adverse possession," so as to invalidate a certificate of title; that the defendant must show that such acts were adverse as under the law; and that possession of part is not possession of the rest of the property, unless it forms one whole, in fact, or by unity of title. *Per* Barry J.: That the plaintiff is entitled to recover any portion of which defendant has not shown actual possession for fifteen years; and, *per curiam*,

that it is for a jury to determine the fact and extent of the possession set up by the defendant. *STAUGHTON v. BROWN*, 1 V.L.R. (L.) 150. (Full Court.)

[VICTORIA.]—Ejectment—Defence—*Adverse possession—Fence.*—To prove adverse possession, it must be shown that there has been a continuation of acts of trespass, connected with a desire and intention to complete the inchoate title. In an action of ejectment upon a certificate of title, the defendant set up adverse possession, but with a break during several years. The only evidence of possession in anyone during this interval was the existence of an old fence, with which the land in question had been enclosed, with other land, by a person formerly in possession, but who had sold to a person not proved to have even taken possession. *Held*, that the fence was not evidence of possession, it not being shown that there was anyone enjoying the benefit of it. *GRAVE v. WHARTON*, 5 V.L.R. (L.) 97. (Full Court.)

[TAS., ACT OF 1862, s. 135.]—Ejectment—Defence—*Registered proprietor—Grant made in fraud or mistake—Statute of Limitations—Effect of certificate.*—In 1885 a certificate of title was issued under *The Real Property Act* to F., which title H., who had been in absolute and undisturbed possession since 1862, sought to avoid under s. 135 and under the *Statute of Limitations*. The land had been originally granted in 1870 to J. H., F.'s predecessor in title, and registered without any application on his part, he being, therefore, a registered but not an applicant proprietor. *Held*, that s. 135 did not apply to F.'s certificate, as it applied only to applicant proprietors, and not where the claim is a grant. The case contemplated by this section could only arise when the first holder of a certificate had procured it by a false or mistaken declaration. *Held*, also, that the *Statute of Limitations* applied to land under *The Real Property Act*, notwithstanding the general words in s. 1 thereof. So that adverse possession for twelve years will prevail against the holder of a certificate of title, in each case the statute to run against the registered proprietor from the date of his certificate of title. The production of a clear certificate of title to himself, together with formal proof of the identity of the land described in the certificate and writ, held to be absolute evidence of a man's title, in the absence of any recognition by him of a subsequent tenancy or adverse interest. *FEATHERSTONE v. HANLON*, 29th April, 1886, Tas. Dig., Col. 10, Badger, *Real Property Digest*, No. 4.

[N.Z.]—Ejectment—Defence—*Statute of Limitations—3 and 4 Will. IV. c. 27—Crown out of possession—Information of intrusion—Scire facias—21 Jac. I. c. 14—Crown Suits Act, 1881—Crown Suits Act, 1883, ss. 22, 23—Supreme Court Rule, 471—New Zealand Company—Land order—Crown grant—9 and 10 Vic., c. 382—10 and 11 Vic., c. 112—14 and 15 Vic., c. 86—31 and 32 Vic., c. 93—New Zealand Company's Land Claimants Ordinances, 1851—1861—Abandonment—Laches—Purchase without notice—Deed—Insufficient description—Land Transfer Acts—Ultra vires—Registration—Priority—Deeds Registration Ordinance, 1842—Deeds Registration Act, 1860—Deeds Regis-*

tration Act 1868—Per Richmond J.: Quere. Whether the report of a Commissioner under s. 12 of the N.Z. Company's Land Claimants Ordinance, 1851, is conclusive? *Held*, per Johnston and Williams JJ. (Prendergast C.J. *dissentiente*), where the Crown has been out of possession of land for more than 20 years and then makes a grant of it, the statute 21 Jac. I. c. 14, giving the person in occupation a right to possession until the Crown has obtained a judgment against him on an information of intrusion, ceases to apply. *Semble*, That the proceeding by writ of intrusion is abolished by "*The Crown Suits Act, 1881.*" Where title is derived under a land order of the N.Z. Company, followed by a Crown grant, 20 years adverse possession before the issue of the grant will not operate as a bar against the grantee. The doctrine of *Johns v. Rivers* (2 N.Z. App. Cas. 344) followed and extended. In 1841, A., the holder of land under a N.Z. Land Company's order, conveyed parts of his land to purchasers by deeds which imperfectly described the land sold. In 1843 the purchasers abandoned the land, which was thereafter occupied adversely by other persons. In 1851 A. conveyed the land to B., who made a claim for a grant. In 1859 C. entered into possession of the land without title. In 1875 the N.Z. Land Company's Land Claimants' Commissioner reported that B. was entitled to a grant; but in 1879 the Commissioner purported to withdraw his report. In 1884 C. took conveyances of the land from the original purchasers and applied to the Commissioner to have his claim investigated. In 1885 a Crown grant was issued to B. antevesting to 1851. *Held*, per Johnston and Williams J., affirming Richmond J. (Prendergast C.J., *dissenting*): (1) That by ss. 3, 4 of *The New Zealand Land Claimants' Ordinance, 1851*, C.'s claim was too late to be entertained, and by *The Amendment Act, 1861*, it was also too late, as being derived from conveyances dated after 1861; (2) That B., being a purchaser for value without notice, and having got in the legal estate, had a good title; (3) That any rights which the original purchaser might have had under 9 and 10 Vic., c. 382, s. 51, to have the grantee declared a trustee for them had been lost by the abandonment of the land for nearly 40 years; (4) That as the land in the deeds of the original purchasers was insufficiently described, no equity against the land would be enforced. *MUDGWAY v. DAVY*, 4 N.Z.L.R., App. Cas. 192. (Full Court.)

[N.S.W.]—Ejectment—*Information of intrusion by Crown—Nullum Tempus Act, 9 Geo. III. c. 16—Construction of 9 Geo. IV. c. 83, s. 24—Application of English statutes to N.S.W.—Held*, affirming the judgment of the Supreme Court of N.S.W., that the Imperial *Nullum Tempus Act, 9 Geo. III. c. 16*, is in force in N.S.W., and that it applies to lands which have never been dealt with by the Crown. That the Act 9 Geo. IV. c. 83, s. 24, *prima facie* on its true construction, applies the *Nullum Tempus Act* to the colony. Its operation to that effect cannot be restricted by confining the laws and statutes thereby applied to those relating to procedure, or by showing that a specific exception in the applied Act preserving the Crown's right could not operate in the circumstances of the colony. ATTORNEY-GENERAL v. LOVE, 15 W.N. (N.S.W.) 132; 1898 A.C. 679.

AFFIDAVIT.

In support of application to remove caveat

See CAVEAT AGAINST DEALINGS—Practice (2).

ALTERATION.

Of instrument after execution

See INSTRUMENTS OF TITLE.

BARKER v. WELD, N.Z.L.R. 3 S.C. 104.

AMENDMENT.

Of certificate of title

See BOUNDARIES.

APPEAL FROM REGISTRAR.

Mode of, on refusal of application to bring land under Act

See BRINGING LAND UNDER ACT—Duties of Registrar.

Ex parte BOWMAN, 7 V.L.R. (L.) 314; Re FAWNS, 28th June, 1867, Tas. Dig., col. 106.

Power of Court on such refusal

See BRINGING LAND UNDER ACT—Miscellaneous Cases.

RIDGE v. RECORDER OF TITLES, 9th October, 1890, Tas. Dig., col. 103.

Costs on

See COSTS.

APPLICATION.

See BRINGING LAND UNDER ACT.

ASSIGNEE.

In insolvency

See BANKRUPTCY.

See CAVEAT AGAINST DEALINGS.

Of lease, liability of

See LEASE.

ASSIGNMENT.

Covenant against, of lease

See LEASE.

ASSURANCE FUND.

Actions against

See REMEDIES FOR DEPRIVATION.

Duty of Registrar to protect

See BRINGING LAND UNDER ACT—Duties of Registrar.

Ex parte BOWMAN, 7 V.L.R. (L.) 314, 3 A.L.T. 25; Re NELSON BROTHERS, N.Z.L.R., 5 S.C. 111.

See also CAVEAT AGAINST DEALINGS, QUEENSLAND TRUSTEES LIMITED v. REGISTRAR OF TITLES, 5 Q.L.J. 46.

Mortgage by company—Seal of company not properly affixed, but instrument otherwise in form—Protection of fund

See In re KAIHU VALLEY RAILWAY Co. v. OWEN, 8 N.Z.L.R. 522.

ASSURANCE FUND.**CONTRIBUTIONS TO.**

[VICTORIA, ACT 1866, s. 32.]—Additional contribution—*Doubtful title of transferee.*—Where trustees, with a power to sell or mortgage, executed a mortgage with power of sale, and the purchaser under the power applied to bring the land under the Act, the Registrar was ordered by the Court to issue a certificate of title on an additional indemnity being paid to the Assurance Fund, in accordance with the provisions of s. 32. *In re SALTER, 2 V.R. (L.) 113, 2 A.J.R. 73.*

[VICTORIA, ACT OF 1866, s. 32.]—Additional Contribution—*Caveat.*—C. verbally promised S., in consideration of £600, that he would not lodge a caveat against the bringing of certain land under *The Transfer of Land Statute*; that he would assist S. in obtaining a certificate of title, and would give a transfer of his interest. C. carried out the contract as far as he could; the land was brought under the Act, an increased contribution being made to the guarantee fund, and it was agreed that £50 should be deducted from the sum to be paid to C. *Held*, that though C. could not recover on the agreement, as it was not in writing, he could maintain an action upon an account stated for the amount agreed to be paid him. *COKER v. SPENCE, 2 V.L.R. (L.) 273. (Full Court.)*

[VICTORIA, ACT 1890, ss. 47, 209.]—Commissioner's right to demand contribution—*Reasons for demanding contribution.*—Under s. 47 of the Act, the Commissioner is constituted the sole judge of the sufficiency of the indemnity in the cases mentioned in the section, but an applicant, on tendering the proper fee, is entitled to be supplied with such information as will enable such applicant to ascertain either (1) What document it is alleged has not been produced; (2) In what respect the evidence of title is said to be imperfect; or (3) What doubtful claim or demand is supposed to have arisen upon the title. *In re SWALLOW & ARIELL, LTD., 20 V.L.R. 308.*

[N.Z., ACT 1885, s. 177.]—Percentage on transmission.—Under s. 177 of the N.Z. Act of 1885 the value of the estate or interest on which assurance charges were leviable was the value of such estate or interest to the transmitter, and not the value of such estate or interest free from encumbrances. *In re Loft, 6 N.Z.L.R. 555.* [N.B.—This decision is affected by s. 11 of the Amendment Act of 1889.]

ATTESTATION.

Of instruments

See INSTRUMENTS OF TITLE.

See REGISTRAR, DUTIES OF.

Ex parte DAVY, 6 N.Z.L.R. 760.

ATTORNEY.

Power of

See POWER OF ATTORNEY.

ATTORNEY-GENERAL.

Right of to lodge caveat on behalf of Crown against application

See BRINGING LAND UNDER ACT

Re WALKER, 11 N.S.W.L.R. 369;
Ex parte BANK OF AUSTRALASIA,
ATTORNEY-GENERAL (CAVEATOR), 15
N.S.W.L.R. (L.) 256.

Caveat by—Crown Lands

See CAVEAT AGAINST DEALINGS.

ATTORNEMENT CLAUSE.

In mortgage

See MORTGAGE—*Distress, Mortgagee in possession.*

BANKRUPTCY.

Of mortgagee—Distress by mortgagee

See MORTGAGE—*Powers and remedies of mortgagee.*

[Q., Act of 1861, s. 86.]—Cancellation of title.—Where a transfer of property was declared void as against a trustee in insolvency, an order was made to cancel the certificates of title in the book, enter the vesting order, and issue new certificates of title. *Re WILDASH and HUTCHISON*, *Ex parte MISKIN*, 1 Q.L.R. (Pt. II) 47.

[VICTORIA, Act of 1866, ss. 49, 51.]—Certificate issued to official assignee—*Subject to rights of dower and rights under a voluntary settlement.*—Where H., an insolvent, paid part of the purchase money of land before his discharge from his first insolvency and the balance after discharge, and voluntarily settled land by post nuptial settlement upon trustees in trust for his wife and children, and a certificate of title was issued to J., the official assignee under the first insolvency, subject to the rights of dower in H.'s wife and the rights under the settlement, and the settlement was set aside as void at the suit of the official assignee under H.'s second insolvency: *Held, per Molesworth J.*, that the vesting of encumbrances on a certificate has no further effect under s. 49 than to leave the rights under the settlement unaffected, though it might be otherwise under s. 51. *SHAW v. SCOTT*, 3 A.J.R. 16.

[VICTORIA, Act of 1890, ss. 236, 237.]—Duty of Registrar—*Assignee of insolvent estate, application by—Caveat—Registration.*—Where the assignee of an insolvent estate, having lodged a caveat against any dealing with land forming part of such estate, makes an application to be registered as proprietor under s. 236 of *The Transfer of Land Act*, 1890, during the existence of such caveat the Registrar is bound to ignore all dealings by the insolvent proprietor with land under the operation of the Act, and to register the assignee. *In re PALMATEER*, 16 V.L.R. 793. (Full Court.)

[S.A.]—Ejectment.—Ejectment cannot be maintained against a bankrupt registered proprietor by his trustee. *KELLY v. DOODY*, 5 S.A.L.R. 132. (Full Court.)

[N.Z., Act of 1885.]—Foreign Bankruptcy.—A bankruptcy in Victoria confers no title recognisable in New Zealand to land in New Zealand, and what purports to be a transmission under such circumstances is not a registrable document. *Ex parte BETTLE*, 14 N.Z.L.R. 129.

[VICTORIA, Act of 1890, s. 236.]—Sale by insolvent trustee in insolvency—*Purchase without notice of insolvency of trustee—Action to enforce mortgage by original insolvent—Necessary parties—Appointment of new trustee—Insolvency Act*, 1890 (No. 1102), ss. 57, 67 (4).—A sale by a trustee of an insolvent estate, who has himself become insolvent, of the interest of the original insolvent in land of which the trustee as such is the registered proprietor, to a purchaser who has no notice of the insolvency of the trustee, is valid. Therefore, in an action to enforce an equitable mortgage given by the original insolvent, the purchaser from the trustee being entitled to the equity of redemption, is a necessary party. There having been such a sale, it is not necessary that a new trustee of the estate of the original insolvent should be appointed and made a party to the action. *CORBETT v. SULLIVAN*, 19 A.L.T. 177.

[N.S.W.]—Voluntary Transfer.—In the case of a voluntary transfer, the Registrar is not entitled to notify on the certificate of title that the transfer is made subject to the provisions of s. 55 of the Bankruptcy Act. *Ex parte CAMERON*, 15 N.S.W.L.R. (L.) 139. (Full Court.) See also *CROW v. CAMPBELL*, 10 V.L.R. (Eq.) 186.

BARE LEGAL ESTATE.

Deprivation of

See REMEDIES FOR DEPRIVATION.

BLANK TRANSFER.

See TRANSFER.

BONA FIDE MORTGAGEE.

Person deprived of interest in land.

See REMEDIES FOR DEPRIVATION.

BONA FIDE PURCHASER

Of land not under the Act.

See REMEDIES FOR DEPRIVATION.

BONA FIDE PURCHASER

See ADVERSE POSSESSION.

MUDGWAY v. DAVY, 4 N.Z.L.R. App. Cas. 192.

See BANKRUPTCY.

See BOUNDARIES.

PLEASANCE v. ALLEN, 15 V.L.R. 601; 11 A.L.T. 28.

See CERTIFICATE OF TITLE.

See ERROR.

See FRAUD.

See MORTGAGE.—*Power of Sale.*

See REMEDIES FOR DEPRIVATION.

BOUNDARIES.

See CERTIFICATE OF TITLE (A)
Cancellation.

ROURKE v. SCHWEIKERT, 9 N.S.W.L.R. (Eq.) 152.

BOUNDARIES.

[TASMANIA.]—Crown Grant—*Mistake in description—Natural boundaries.*—In a deed where natural boundaries, such as a river or the seashore, are referred to, they must prevail, al-

though neither the distances nor the computed contents correspond with such boundaries. *Re CLERKE*, March 9, 1871. *Tas. Dig.*, col. 104.

[TASMANIA.]—*Crown grant—Mistake in description—New grant upheld—Survey incapable of error.*—In a grant from the Crown to E. of a piece of land, the description did not apply to the land actually purchased, but by a mistake in the diagram included other land. On discovering the mistake, the grant was set aside and a new one issued. It was shown that E. bought in accordance not with the diagram but with the survey, and the corrected grant was upheld, as where there is a discrepancy between the two the survey must prevail, as being incapable of error. *QUEEN v. EGAN*, Sept. 6, 1884, *Tas. Dig.* col. 104.

[VICTORIA.]—*Crown Grant—Construction—Evidence.*—In a Crown grant, the land sold was described by the acreage and by measured boundaries, and was also described as being bounded on the south by a road one chain wide. No starting point for the measurements was given in the description of the parcels, but on the ground itself the angle of the road, and the south-eastern point of the land, were marked by a peg put in by the Government surveyor. According to the position of the peg and boundary, the land was some acres less than the quantity mentioned in the grant, and the eastern boundary was one chain shorter than the grant asserted it to be. The judge at the trial rejected evidence which was tendered by the plaintiff to show that, by measuring from the starting point of an allotment north of the allotment in question, the plaintiff could only obtain the proper quantity by including the road, and directed the jury that the land conveyed was not that mentioned in the grant, but the portion actually marked out by the Government surveyor, and that this could not be controlled by the measurements in the grant. On motion for a rule for new trial, *held*, that the question was one for the jury; that the direction to them was right; and that the rule should be refused. *SCOTT v. SHIRES OF ELTHAM AND HEIDELBERG*, 2 V.L.R. (L.) 98.

[VICTORIA.]—*Crown Grant—Discrepancy between and survey boundaries—Survey Boundaries Act, 1885 (No. 855), ss. 3, 1, 6—Discrepancy, meaning of—Error or mistake—Fence to be regarded as survey boundary—Obliteration of survey boundaries.*—Wherever there is a discrepancy, however great, between the dimensions of survey boundaries or the area they include, and the area or dimensions expressed in a Crown grant, the survey boundaries are to be taken as the controlling dominant indicator of title, and must prevail. *BROWN v. ANTHONESS*, 16 V.L.R. 284, 11 A.L.T. 204. (Full Court.)

[N.Z.]—*Crown Grant—Description of parcels in—Absence of natural boundaries—Evidence—Survey—Occupation—Possession.*—When parcels of land are granted by the Crown having no natural boundaries, the original survey marks being gone, and when there is no great difference in admeasurement, a long occupation acquiesced in by the adjoining owners will be taken by the Court as convincing evidence that the lands occupied are the lands granted, notwithstanding that they cannot be made to tally with the plans or the grants. Next to natural boundaries, the highest regard is had to lines actually run, and

corners actually marked, at the time of a grant, and, if the description is doubtful, parol evidence of the construction given to it by the parties is admissible, and will bind their successors in title. *Semble*, that even under *The Land Transfer Act*, possession should be the best evidence of title. *EQUITABLE BUILDING AND INVESTMENT Co. v. ROSS*, N.Z.L.R. 5 S.C. 229.

[N.Z., Act of 1885.]—*Plan passed by Survey Office—Occupation—Old Fence—Injunction.*—The predecessors in title of the plaintiffs and defendants respectively bought from the same vendor adjacent properties. The weight of evidence showed that a certain old fence was the boundary between these properties, according to which they were sold. The defendant's measurements on the ground, from the corner of his allotment to this fence, along another boundary, was shorter than the measurement shown on his conveyance. The plaintiffs' measurement along the continuation of this boundary, from the fence to the corner of his allotment, was not greater than that shown on his conveyance. The defendant removed the fence on to the plaintiffs' land, so as to make the measurements on the ground correspond with the measurements on his conveyance, and the Survey Office passed as correct a plan showing the new position of the fence as the true boundary between the properties. The defendant applied to bring the land shown as his on the plan under the provisions of the Acts. On action brought to restrain the application, and for damages, *held*, that the plaintiffs were entitled to an injunction to restrain the defendant from proceeding with his application; that the defendant had no right to apply for, and the Land Transfer Office should have refused to grant, a certificate of title including the land on the plaintiffs' side of the old fence, even although, according to the survey accepted by the office, the conveyance might show that the defendant was entitled to it. *Equitable Building and Investment Co. v. ROSS*, N.Z.L.R. 5 S.C. 229, *supra*, followed. *TANNER v. THOMSON*, 7 N.Z.L.R. 71.

[VICTORIA, Act of 1866.]—*Certificate of title—Parcels—Plan in margin—Abutments—Figured dimensions—Statute of Limitations—Possession of unenclosed portion of land by possession of adjoining enclosed portion—No connected adverse possession—Wrongful admission of unimportant evidence.*—Where the description of land in a certificate of title, giving the area approximately, is merely by a plan on the margin, showing abutments at each end on a street, the dimensions of the boundary lines being also marked, but falling short of the actual distance between such two streets, the position shown by plan will govern, to the exclusion of the figured dimensions, which will be considered as *falsa demonstratio*. Where the fence of one portion of a close has been allowed to disappear, the other portion being in continuous occupation, there having been no continuous adverse possession of the unenclosed portion, the Statute of Limitations does not run against the occupier of the enclosed portion. The wrongful admission in evidence of deeds of other land, to show the position of one of the abutting streets, is not a ground for interfering with the verdict, where there is sufficient other evidence to support it. *SMALL v. GLEN*, 6 V.L.R. (L.) 154.

[VICTORIA, ACT OF 1866, s. 47.]—Certificate of title—*Plan in margin—Starting point therein mentioned—Old starting point superseded.*—Plaintiff's certificate of title referred to a plan in its margin which showed by figured dimensions that the commencing point of his land was 76 feet north from the N.E. angle of a certain allotment 2. Defendant's certificate of title also referred to a plan in its margin which showed by figured dimensions that the commencing point of her land was 59 feet 6 inches north from the same N.E. angle, and that her land extended further north 16 feet 6 inches, thus making the northern boundary conterminous with the plaintiff's southern boundary. There was nothing on the face of either certificate to fix where, upon the land, the N.E. angle of allotment 2 was, but its position in fact was proved by evidence *aliunde*. Defendant was in possession of land lying between points 76 feet and 78 feet $4\frac{1}{2}$ inches north of that angle, as so proved, thus apparently encroaching 2 feet $4\frac{1}{2}$ inches on plaintiff's land, to recover which this action was brought. Defendant proved that measuring southward from an old peg found at the angle of two streets there was a distance of 531 feet $\frac{1}{2}$ inch between that peg and the N.E. angle of allotment 2, which showed an excess of 3 feet $\frac{1}{2}$ inch between these points, according to a plan of subdivision produced, and if the measurement were taken from that peg there would be no encroachment by the defendant. *Held*, that the N.E. angle of allotment 2 being the point from which the figured dimensions were shown in the certificates of title, that point, and not the old peg, must be taken as the starting point to determine the position of the boundary line between the plaintiff's and defendant's land. *KIRKHAM v. CARPENTER*, 12 V.L.R. 144.

[VICTORIA, ACT OF 1866, ss. 47, 49.]—Certificate of title—*Plan in margin—Parcels—Variance between plan with figured dimensions and pegs upon the ground.*—In an action for recovery of land alleged to be encroached upon by the defendant's building, the parcels of the plaintiff's certificate showed his land to be part of allotment 2, and the plan thereon showed the same, and also that allotment 1 between it and the corner of a public street was 66 feet in width; and this evidence showed that the defendant's wall was 7 inches beyond such 66 feet. The parcels of the defendant's certificate and plan (prior in date to the plaintiff's) showed that her land was part of allotment 1, but there were no figures showing the distance between her land and the corner of the street; and her evidence showed that her wall was placed in a line with the original allotment peg between the two allotments, and that there was a surplus in allotment 1. *Held*, that as between the two certificates the position of the defendant's land was to be ascertained by the original allotment peg, and she was entitled to the land in dispute. *STEVENS v. WILLIAMS ET Uxor*, 12 V.L.R. 158. (Full Court.)

[VICTORIA, ACT OF 1866, ss. 49, 145; ACT OF 1885, ss. 7, 8.]—Certificates of title—*Amendment of errors in—Bonâ fide purchasers.*—B., the registered proprietor of land fronting a certain street, upon 29 feet of which frontage were two shops and on the rest an hotel, in September, 1887, sold to W. the 29 feet frontage on which the two shops were erected, the land being so described in the con-

tract of sale. A transfer was subsequently signed by B. to W., in which the position of the position of the 29 feet frontage, by mistake of B.'s solicitor, was so described as to overlap the wall of the hotel by $5\frac{1}{2}$ inches, and in November, 1887, a certificate of title was issued to W. of the 29 feet, including this $5\frac{1}{2}$ inches. W. subsequently sold the land so described to M., who obtained a certificate of title for the same, and in turn sold to the plaintiffs, who also obtained a certificate of title to the 29 feet, including the $5\frac{1}{2}$ inches. In October, 1887, B. sold the portion of the land on which the hotel was built to J., who subsequently sold the same to the defendant, who obtained a certificate of title to the land on which the hotel stood, less the $5\frac{1}{2}$ inches. On discovering the mistake the defendant applied to the Titles Office to have his certificate of title amended by including the $5\frac{1}{2}$ inches. Notice of the application was given to the plaintiffs, who lodged a caveat against it, and then brought an action to eject the defendant from the $5\frac{1}{2}$ inches, to which the defendant counterclaimed, asking to have both certificates of title amended. *Held*, that as the plaintiffs or their predecessors never intended to purchase the $5\frac{1}{2}$ inches, but the shops as they saw them on the ground, they were not *bonâ fide* purchasers for value of the land mentioned in their certificate, and were not therefore protected by ss. 49 and 145 of Act No. 301; that the defendant was entitled to have both certificates rectified, but that this would only be done upon terms of his procuring for the plaintiffs the $5\frac{1}{2}$ inches on which the cottages stood but which were not included in their certificate of title. *PLEASANCE v. ALLEN*, 15 V.L.R. 601; 11 A.L.T. 28.

[N.S.W., ACT OF 1862, ss. 33, 40, 115.]—Certificate of title—*Misdescription of boundaries.*—J. M. applied for and obtained a certificate of title to certain lands described in the application and the certificate of title, all formalities required by the Real Property Act having been duly complied with. Some years afterwards it was discovered that a portion of defendant's land was, owing to a mistake made in the survey, included in the certificate of title issued to J. M. The defendant claimed the land under Crown grant and various deeds of a date prior to the issue of the certificate of title to J. M. The plaintiffs (devisees of J. M.) contended that under s. 33 of the Real Property Act the certificate of title issued to J. M. was conclusive evidence of his ownership. *Held*, that s. 40 of the Act must be read as a proviso to s. 33. *Also*, that the present case came under s. 115 (5) of the Act, and therefore plaintiffs failed. *MARSDEN v. MCALISTER*, 8 N.S.W.L.R. (C.L.) 300. (Full Court.)

[S.A., ACT OF 1861, s. 134; cf. ACT OF 1885, s. 69 (6).]—Certificate of title—*Land brought under Act—Wrong description of boundaries—Trespass.*—Through a mistake made by a licensed surveyor in a plan, a portion of the defendant's land was, on the bringing of the land under the Real Property Act, included in a certificate of title to plaintiff, the defendant being then in actual occupation of the land. *Held*, on action for trespass, that the defendant, having been in actual occupation and rightfully entitled when the land was brought under the Act, the plaintiff's certificate was void as against the defendant by virtue of s. 134 of

The Real Property Act of 1861. GALLASH v. SCHUTZ, 16 S.A.L.R. 129.

[VICTORIA.]—Certificate of Title—Action against Surveyor—Plan in Margin—Figured dimensions—Abutments—Negligence in survey—General damages.—Where the figured dimensions on a plan in a certificate of title and the fact that the boundaries are shown by straight lines would lead to a wrong inference as to the dimensions of the land, but abutments are shown correctly, the registered proprietor is entitled to all the land which actual measurements on the ground would show to lie between those abutments. Damages for negligence in survey by omission of some of the figured dimensions through which the plaintiff is left with an apparent title to less than he really possesses, are general damages, and may be recovered under the general head of damage, though not specifically alleged. ARCHARD v. ELLERKER, 10 A.L.T. 196. (Full Court.)

BREACH OF COVENANT.

See LEASE.

See REGISTRAR, DUTIES OF.

BREACH OF TRUST.

See FRAUD.

Liability of new trustee for

See TRUSTS AND EQUITIES—New trustee.

BRINGING LANDS UNDER THE ACT.

By adverse possessor

See also ADVERSE POSSESSION.

In fraud of adverse possessor

See also ADVERSE POSSESSION.

See BOUNDARIES.

TANNER v. THOMSON, 7 N.Z.L.R. 71

Fraud of applicant

See ADVERSE POSSESSION.

See CERTIFICATE OF TITLE.

See FRAUD.

Subsequent recovery of land in action by person deprived—Expenses of bringing under Act disallowed to applicant

See FRAUD.

OGLE v. AEDY, 13 V.L.R. 461.

Duty of Registrar on application

See also REGISTRAR, DUTIES OF.

Power of Court to restrain Registrar from proceeding after lapse of caveat

See also REGISTRAR, DUTIES OF.

Trusts unaffected by

See TRUSTS AND EQUITIES.

BRINGING LAND UNDER ACT.

A. WHAT LANDS MAY BE BROUGHT UNDER ACT.

B. CAPACITY TO BRING LAND UNDER ACT.

C. PRACTICE WHERE CONFLICTING CLAIMS.

(a) Statement of adverse claims in application.

(b) Capacity to lodge caveat.

(c) Lapse and removal of caveat.

(d) Trial of issues between conflicting claimants.

D. DUTIES OF REGISTRAR.

E. MISCELLANEOUS CASES.

A. WHAT LANDS MAY BE BROUGHT UNDER ACT.

[N.S.W., ACT OF 1862.]—Block of land.—Every application to bring land under the provisions of *The Real Property Act* must be confined to one block or contiguous tract of land. *Ex parte BURNELL*, 3 S.C.R. (N.S.W.) 148. (Full Court.)

[N. Z., ACT OF 1885, s. 17 and ss. 55 and 67.]—Crown lands not alienated nor contracted to be alienated—Mistake—Summons for correction—Bonâ fide transferee—Crown not bound—Road—Rights of Public.—Land which has never been alienated, nor contracted to be alienated, from the Crown cannot be brought under the provisions of *The Land Transfer Act*. A land registrar has no jurisdiction to grant a certificate of title to such land, and a transferee of such land bonâ fide for value, obtains no better title than the transferor. If *The Municipal Corporations Act* divests such land from the Crown, and vests it as a road in the local corporation, the land, until the road is closed or disposed of by the corporation under its statutory powers, is still subject to an absolute right of user by the public, and sections 55 and 67 of *The Land Transfer Act* do not bar that right. *In re CARGILL* 7 N.Z.L.R. 481. [Dissented from *In re OKIRAE BLOCK*, 10 N.Z.L.R. 677, post.]

[Q., ACT OF 1861, ss. 15, 16.]—Escheat—Land re-granted after 1862.—Prior to the passing of *The Real Property Act* of 1861, certain land was granted by the Crown in fee to a subject, of which land G. became the owner by purchase. G. died intestate and without heirs. A person who claimed to be the heir-at-law of G. executed a conveyance of the land to F., who conveyed it to B. The fact that the land had escheated to the Crown having been discovered, the Crown issued a grant of the land to F., which was registered in the register kept under *The Real Property Act* of 1861. All the previous dealings with the land had been duly registered under the old system of conveyancing. B. then applied to bring the land, of which he had received a conveyance from F., under *The Real Property Act* of 1861. Held, that the grant from the Crown to F. having been registered under the Act of 1861, the land was subject to the Act, and that nothing could be done on B.'s application. *Re BOURKE*, 7 Q.L.J. 133. (Full Court.)

[VICTORIA, ACT OF 1866, s. 24.]—Escheat—Information—Statute of Limitations (Act No. 213, Part II.)—Injunction—Jurisdiction.—There is jurisdiction in Equity to entertain an information filed by the Attorney-General for a declaration of the title of the Crown to an escheat, and for an injunction against any dealing with the land by the Registrar of Titles, although the information shows a legal title in the Crown and

alleges no special ground of equitable jurisdiction. The Statute of Limitations (Act No. 213, Part II.) does not affect the Crown. *ATTORNEY-GENERAL v. HOGGAN*, 3 V.L.R. (E.) 111.

[N.S.W., ACT OF 1862.]—*Estate Tail—Application by devisee under will—Rule in Shelley's case.*—*Held*, on the construction of a will, that the applicant was by the operation of the rule in Shelley's case, a tenant-in-tail, and, as such, entitled to bring the land under the Act. *Ex parte WILLIS*, 12 S.C.R. (N.S.W.) (L.) 312. (Full Court.)

[VICTORIA, ACT OF 1890, ss. 19, 21, 26.]—*Land already under the Act—Real Property Act, 1890 (No. 1136), s. 43—Land Act, 1890 (No. 1106), s. 17—Title by adverse possession.*—When land is under the operation of *The Transfer of Land Act* of 1890, it always remains so. A., claiming to be the owner in fee of certain land by adverse possession, applied to the Registrar of Titles to bring the land under the operation of *The Transfer of Land Act*. The land was under the operation of the Act before A.'s title by adverse possession became complete. The Registrar having refused the application, *Held*, that the application was properly refused. *Per Holroyd J.*: A.'s proper way to get a certificate of title to the land is to bring an action against the registered proprietor to compel him to transfer. *In re ALLEN*, 18 A.L.T. 28, 22 V.L.R. 24. (Full Court.)

As to a public road being brought under the Act.—*See In re INNES, TIERNEY v. LOXTON, infra* (C.) (b.g.)

(B.) CAPACITY TO BRING LAND UNDER ACT.

[Q., ACT OF 1861, s. 19, 27.]—*Adverse possessor.—Duty of Registrar of titles.*—Where, on an application to bring land under the Act, the applicant's title arises from adverse possession, the Registrar of Titles should deal with the application in the ordinary way. He cannot refuse to inquire into the evidence in support of the application, though he may, if not satisfied with the evidence, refuse to go on with the application. *Ex parte O'NEILL*, 7 Q.L.J. 155. (Full Court.)

[TAS.]—*Adverse Possessor—Sale of interest in possessory title sold f. fia—Injunction against bringing land under the Act*—D., an applicant to bring land under the Act, had purchased at a sheriff's sale the right, title and interest of C. and set up a possessory title as having been vested in C. at the time of the sheriff's sale by virtue of upwards of 20 years' possession by him as owner. It appearing, however, that C. had held the land as tenant from his mother, an injunction was granted on her application to restrain D. from proceeding with his application. *WARNER v. DOVE*, Badger 37.

[N.S.W., ACT OF 1862.]—*Applicant out of possession.*—An application to have lands brought under the operation of *The Real Property Act* of 1862 must be entertained by the Registrar, although it appears by the terms of the application that the lands in question are as a matter of fact in the adverse occupation of some other person. *Ex parte HAMILTON*, 3 S.C.R. (N.S.W.) 311. (Full Court.)

[VICTORIA, ACT OF 1890, s. 34.]—*Applicant owner of deeds—Injunction against applicant by person in adverse possession.*—The plaintiff, a holder by adverse possession, claimed to be en-

titled to certain land as against the defendant. The plaintiff brought an action against the defendant, claiming specific performance of an alleged agreement for sale of the land to him by the defendant, and also claiming an injunction to restrain the defendant from proceeding to obtain a title under *The Transfer of Land Act*. At the trial the claim for specific performance was abandoned, but the injunction was granted. The special jurisdiction under s. 34 of *The Transfer of Land Act* was not invoked by the plaintiff, but no objection was taken to this on the pleadings of the defendant. *Held*, that under the circumstances the injunction was rightly granted. A person who has acquired title by adverse possession has a right to restrain a person having title by deeds from applying for a certificate of title to land under *The Transfer of Land Act*. *Ex parte BROWN* (5 V.L.R. (L.) 5) overruled. *BETHUNE v. PORTEOUS*, 19 V.L.R. 16. (Full Court.)

[TAS., ACT OF 1862, s. 110.]—*Heir-at-law—Imperfect title—Refusal of Registrar to bring land under Act.*—By his will A. devised an estate to B. for life, remainder to C., subject to an executory devise over, in case B. should refuse to allow A.'s widow to live on the estate, "to my heir-at-law." On A.'s widow refusing to live on the estate, an arrangement was made, she releasing her right of residence, and D. (then A.'s heir-at-law) releasing his contingent interest. On C.'s applying to bring the land under the Act, the application was refused, on the ground that his title was imperfect, as D. might not be heir-at-law when the contingency of A.'s widow being refused arose, and that the estate would not be then validly released. *Held*, that the words "my heir-at-law" must bear their natural and primary meaning, and mean the heir-at-law at the time of testator's death; that the release was accordingly good, and the application wrongly refused. *In re COOK*, July 12, 1878, Tas. Dig., col. 106.

[Q., ACT OF 1861, ss. 16, 19, 30.]—*Judgment debtor—1 and 2 Vic., c. 110, s. 13, 19; 25 Vic., No. 43, s. 38—54 Geo. III., c. 15—Registration of judgments.*—Before the passing of *The Real Property Act* of 1861, a judgment entered up but not followed by a writ of execution operated and still operates upon the land of the debtor, and, consequently, forms a charge which ought to be registered if brought to the knowledge of the Registrar-General. A judgment entered up in the Supreme Court against any person binds all his real estate so long as the judgment is outstanding. The Registrar is required to reject applications to bring land under the provisions of the Act of 1861 whenever a judgment against the applicant is outstanding, and the judgment creditor does not join in the application. Where a judgment has been satisfied, or proceedings have been stayed, the Registrar may treat the land or the judgment debtor as discharged from the judgment. *SPECIAL CASE* (No. 1), 1 S.C.R. (Q.) 56 (1862). [*Sed vide Common Law Practice Act* of 1867, s. 45, and *Q. Act* of 1861, s. 91.]

[Q., ACT OF 1861, ss. 1, 16, 19, 20.]—*Judgment debtor.—Deeds Registration Act, 7 Vic., No. 16, s. 21—Judgment not followed by execution.*—A judgment not followed by a writ of execution binds land alienated by the Crown before 1862 in such a manner that the Registrar-

General will be compelled to reject any application to bring such land under the operation of the Act, if a judgment has been at any time entered up against the applicant, and the judgment creditor has not consented to the application. *SPECIAL CASE (No. 2), 1 S.C.R.(Q.) 60.* [Sed vide *Common Law Practice Act of 1867*, s. 45, and *Q. Act of 1861*, s. 91.]

[*S.A., Act of 1861*, s. 14.]—**Mortgagee.**—*Sale by mortgagee—Purchaser nominee of applicant.*—Under *The Real Property Act*, s. 14, a mortgagee of land under the old system having exercised his power of sale may apply to bring the land under the Act in the name of the purchaser. *In re DAVIS*, 1 S.A.L.R. 67. (Full Court.)

[*N.Z., Act of 1885*.]—**Mortgagee's Executors**—*Trust—Circumstances attending the mortgage of trust property—Constructive notice to mortgagee—Purchaser under power of sale.*—In the year 1862, H.N. conveyed certain land to his son, W.H.N. and his heirs, upon trust for W.H.N. for life, with remainder to the wife of W.H.N. for her life, and remainder to the children of W.H.N. by his marriage. The deed further directed that the provisions of ss. 22, 28, 29, 30, and 31 of *The Conveyancing Ordinance*, 1842, should be deemed to be incorporated in the deed. There were several children of the marriage. In the year 1885, W.H.N., being desirous of building upon the land, consulted a solicitor as to whether he could raise money upon it by way of mortgage. He was informed that he could sell the land to his wife, and that she would then be able to effect a mortgage upon it, but that the proceeds of the sale must be disposed of as required by s. 22 of *The Conveyancing Ordinance*, 1842, and that, if he built upon the land with the money so obtained, it would be at his own risk. The solicitor then, acting upon his instructions, prepared a conveyance of the land from W.H.N. to his wife (the consideration being stated at £1000, the receipt of which was duly acknowledged), and a mortgage of the land by the wife to B. for the sum of £800 was prepared and executed. The solicitor acted for all the parties in the transaction. W.H.N. deposed by affidavit that he had spent mortgage moneys in building upon the land. B. died in the year 1889. Default having been made in the payment of interest, the land was sold by the Registrar of the Supreme Court, and bought in by B.'s executors. Upon the refusal of the District Land Registrar to allow the land to be brought under the provisions of the Real Property Act, *Held*, that there was no ground for imputing to B., either directly or constructively through his solicitor, knowledge of the circumstances attending the sale of the land by W.H.N. to his wife, and that the executors were entitled to have the land brought under the provisions of *The Land Transfer Act*, 1885. *Re BYGUM*, 13 N.Z.L.R. 270.

[*VICTORIA, Act of 1866*, ss. 17, 18, 25, 38, 47.]—**Mortgagor**—*Action for injunction against applicant by equitable mortgagee—Statute of Limitations.*—The Statute of Limitations is a good defence to an action to enforce a security by deposit, without writing, of title deeds to land, and to restrain the depositor and Registrar of Titles from proceeding with an application to bring the land under the Act, where the deposit was made more than fifteen years before action brought, and there has been no payment of

principal or interest. *KEMP v. DOUGLAS*, 1 V.L.R. (E.) 92, followed. *BARNET v. WILLIAMS*, 15 V.L.R. 205, 10 A.L.T. 230.

[*N.S.W., Act of 1862*, ss. 13, 16.]—**Mortgagor**—*Consent of mortgagee.*—If the mortgagee signs a memorandum upon the application stating that he consents to it, and asking that his rights as mortgagee be noted on the certificate when issued, he has joined in, or become a party to, the application within the meaning of ss. 13 and 16 of the Act. *Re LACKERSTEEN*, 14 W.N. (N.S.W.) 166. (Full Court.)

[*N.Z., Act of 1885*.]—**Purchaser from public Trustee**—*Rating Act, 1882*, ss. 37 to 44—*Sale of land for non-payment of rates.*—Where a conveyance is made by the public trustee of land sold for non-payment of rates, under the powers contained in *The Rating Act*, 1882, the purchaser has an unimpeachable parliamentary title to the land, and may bring it under the provisions of *The Land Transfer Act* without being required to supply evidence as to the validity of the sale. *In re POND*, N.Z.L.R. 5 S.C. 254.

[*Q.*, Act of 1861, ss. 16 *et seq.*]—**Purchaser in possession for twenty years.**—*Crown grant delivered to purchaser.*—The Crown grantee of certain land sold it to a purchaser and gave possession of the land and delivered the Crown grants to him. The vendors received the purchase money, but no transfer of the land was executed. Two years afterwards the vendors disappeared, and were not afterwards heard of. The purchaser continued in undisturbed possession of the land for twenty years after the purchase, and then applied to the Registrar-General to issue a certificate of title to the land in his name. *Held*, that the purchaser was entitled to have the certificate of title issued. *Held*, also, that when a good *prima facie* title to land is established, such as the Court would compel a purchaser to take, a certificate of title ought to issue. *In re EATON*, 1 Q.L.J. Supp. 9.

[*N.S.W., Act of 1862*.]—**Purchaser from owner**—*Payment of stamp duty on conveyance.*—*See Ex parte CLISSOLD*, 5 N.S.W.L.R. (C.L.) 176 (Full Court), *infra* (D) DUTIES OF REGISTRAR.

[*N.Z., Act of 1885*, s. 145.]—**Trustee.**—*Tenant for life, his nominee.*—A trustee of land is not justified in bringing it under the provisions of *The Land Transfer Act* in the name of the tenant for life. *MILLER v. STEWART*, N.Z.L.R. 5 S.C. 330.

[*VICTORIA, Act of 1866*, ss. 17, 32.]—**Trustee with power of sale and mortgage**—*Additional contribution—Doubtful title of transferee.*—Where trustees, with a power to sell or mortgage, executed a mortgage with power of sale, and the purchaser under the power applied to bring the land under the Act, the Registrar was ordered by the Court to issue a certificate of title on an additional indemnity being paid to the Assurance Fund in accordance with the provisions of s. 32. *In re SALTER*, 2 V.R. (L.) 113, 2 A.J.R. 73.

[*N.Z., Act of 1870*.]—**Trustee without power of sale.**—It is a gross irregularity for a certificate of title to be issued to trustees who have no power of sale. *GEORGE v. A.M.P. SOCIETY*, N.Z.L.R. 4 S.C. 165.

[*VICTORIA, Act of 1866*, s. 17 (1) and (5).]—**Trustee without power of sale.**—*Right to bring land under the Act.*—Trustees in fee-simple

of land, not having power of sale, are owners within s. 17 (1) and entitled to bring land under the Act. *In re BENN AND GRICE*, 12 V.L.R. 366. (Full Court.)

[N.S.W., ACTS, 1862 AND 1878]—**Trustees—New trustees substituted as applicants—Costs.**—On a motion to substitute in place of the applicant two new trustees, the Court (following *Re BRODZIAK*, 2 N.S.W.L.R. 305, *post*, (C.) (d) *Trial of issues*) made the order on payment of costs by the new applicants, and on their giving security for costs already incurred. *Re SMITH'S TRUSTEES*, 4 W.N. (N.S.W.) 111. (Full Court.)

C. PRACTICE WHERE CONFLICTING CLAIMS.

(a) *Statement of adverse claims in application.*

[N.S.W., ACT, 1862, s. 13.]—**Existing Encumbrances—Private Act of Parliament—Trustees for sales under—Powers of.**—James Underwood, by his will, devised his real estate to his five sons and a grandson in certain proportions for their respective lives, with remainder to their children in equal shares and proportions as tenants in common in tail, with cross remainders between them in tail. By a Private Act, the sale of the whole of the devised properties was authorised for the beneficiaries. The legal estate was vested in trustees, who were empowered to sell the lands and convey them to purchasers in fee, and such lands were to vest absolutely in the persons to whom they were conveyed, their heirs and assigns. The trustees applied to have a certain portion of the lands brought under the provisions of *The Real Property Act*. The Commissioners rejected the application on the grounds, substantially, that it had been ascertained, by searches in the Registry Office, that there were various encumbrances affecting the property, which had not been noticed in the application, and that the parties interested in such encumbrances were not parties to this application. The trustees applied to the Court, under s. 107 of *The Lands Titles Act*, to make such order as the circumstances of the case might require. *Held*, that the legal estate was vested in the trustees, and that they had the power of conveying a title in fee simple to purchasers. *Held* also (Martin C.J. dissenting), that the trustees had complied with the provisions of the Act, and the application should be sent back to the Registrar to cause the investigation of the title to be proceeded with. *Ex parte PENNINGTON*, 13 S.C.R. (N.S.W.) 305. (Full Court.)

[N.Z., ACT OF 1870.]—**What claims must be stated.**—An owner is not obliged to specify in his application every demand (honest or dishonest, well-founded or ill-founded), which may by possibility at any time be set up in opposition to his title. He need not state an alleged interest, in respect of which no claim has ever been made on him, nor any action commenced. *In re TANNER*, N.Z.L.R. 5 S.C. 102.

[N.S.W., ACT OF 1862, s. 14.]—**Claim of Trespasser.**—An applicant to bring land under the Act need not disclose, in his application, the fact that a trespasser claims the land. *In re BECKETT*, 15 N.S.W.L.R. (L.) 94. (Full Court.)

(b) *Caveat—Capacity to lodge.*

[N.S.W., ACT OF 1862, ss. 21, 23.]—**Caveat by trustees—Lapse of caveat—Suit by beneficiaries**

to restrain application—Locus standi.—On an application to bring land under the Act, a caveat was lodged by the trustees under a will, but lapsed owing to no order having been obtained within three months from the date of the caveat. In a suit by the beneficiaries under the will to restrain the issue of the certificate of title, the applicant and the trustees (caveators) being defendants, *held*, that the suit could not be maintained, the Court having no jurisdiction to deal with the rights of the parties, except under *The Real Property Act*, the only parties entitled to take proceedings under that Act being the applicant and the caveators. *DWYER v. CAIRD*, 10 N.S.W.L.R. (Eq.) 83.

[Q., ACT OF 1861, s. 23.]—**Cestui que trust.**—A *cestui qui* trust is not necessarily disqualified from lodging a caveat. *In re HODGSON'S CAVEAT*, No. 774, B.C.R. 30th May, 1878.

[Q., ACT OF 1861, s. 26.]—**Contingent interest of caveator.**—This section by no means gives the caveator a right to object to the title, and merely provides that if the title is questioned, then such and such objections are not to be taken. *In re HODGSON'S CAVEAT*, No. 774, B.C.R. 30th May, 1878.

[N.S.W., ACT OF 1862, s. 21.]—**Person entitled to lodge caveat—Application to bring public road under Act.**—Under s. 21 of the Act, a person cannot lodge a caveat unless he has some legal or equitable interest in the land, partaking of the character of an estate or of an equitable claim upon the land. A member of the public has no right to lodge a caveat to prevent land which is a public road from being brought under the Act. *In re INNES*, 12 N.S.W.L.R. (L.) 180. (Full Court.)

[N.S.W., ACT OF 1862, s. 21.]—**Person entitled to lodge caveat—Application to bring public road under Act.**—A person owning land under a title derived from a Crown grant, adjoining what is known as a Government road—that is, a road marked or laid out by the Crown, and described in the grant under which he owns his land as bounding the land granted—has not an interest in the soil of the road, within the meaning of s. 21 of *The Real Property Act*, and he cannot, therefore, lodge a caveat against an application to bring the land comprising the road under the Act. The presumption that an owner of land adjacent to a road has the property in the soil of the road *usque ad medium filum viæ* arises, in the absence of express evidence, on the supposition that the adjoining owners have contributed to the formation of the road, and have dedicated it to the public benefit. But this presumption is rebutted where the owner of the land derives his title by Crown grant, and in the grant the road is described as bounding the land. *TIERNY v. LOXTON* (No. 1), 12 N.S.W.L.R. 308. As to Costs, see *TIERNY v. LOXTON* (No. 2) [*infra*, (c) *Lapse and Removal of Caveat*] 13 N.S.W.L.R. (L.) 115. (Full Court.)

[N.S.W., ACT OF 1862, s. 11 (5).]—**Caveat on behalf of Crown.—Must be lodged by Attorney-General.**—The Registrar entered a caveat on behalf of Her Majesty, forbidding the bringing of certain lands (which were claimed as Crown lands) under *The Real Property Act*. On an application for the removal of the caveat it was contended on his behalf that by virtue of s. 11

(5) he was the proper person to enter such caveat. *Held*, that under the subsection he could only enter a caveat when the land was under the Act, and that the proper person to enter a caveat on behalf of Her Majesty forbidding the bringing of lands under the Act was the Attorney-General. *In re WALKER*, 11 N.S.W.L.R. 369. (Full Court.)

[S.A., Act of 1861, s. 48; Act of 1878].—**Person having right-of-way.**—On caveat being lodged and petition filed by the caveator, under the provisions of the Act of 1878, against the bringing of land under the Act, the Court has power by virtue of s. 48 of The Principal Act (1861) to order the Registrar-General to enter on the certificate of title to be issued pursuant to the application a right-of-way to which the caveator is entitled as appurtenant to other land belonging to him. *Quære*, whether the person entitled to a right-of-way appurtenant has any caveating capacity. *Re SCHMID AND FIELD*, 15 S.A.L.R. 48. (Full Court.)

[N.S.W., Act of 1868, ss. 11 (4) 43].—**Person having right-of-way.**—The person entitled to a right-of-way over land is the owner of such an interest as entitles him to lodge a caveat in respect thereof when an application is made to bring the land under the Act. *Semble*, that where the applicant's title deeds disclose a right-of-way it is the duty of the Registrar to endorse it on the certificate, even if there were no caveat. Upon a motion to remove a caveat or direct an issue, the Court is not strictly bound by the terms of the notice of motion, but settles the issues which really arise. *Re HOUBSON, SHEPHERD SMITH, CAVEATOR*, 14 W.N. (N.S.W.) 3, 18 N.S.W.L.R. (L.) 300. (Full Court.)

[N.Z., Act of 1885].—**Light—Right to—Prescription—Pulling down of old building—Erection of new one with new lights—Abandonment of old light—Subsequent impossibility of defining same—Loss of right—Statute of Limitations—Adverse possession—How far interfered with by use of light—Registration of easement.**—In 1852 two Crown grants were issued, to the persons then entitled, to two subdivisions (Nos. 8 and 12) of a certain section of land in the city of Wellington. The two subdivisions adjoined one another and fronted the same street, No. 12 being the northernmost of the two. Both before and after the issue of the grants those entitled to No. 12 occupied along with it a strip about 5 feet wide, running from the street and along the full depth of the subdivisions, joining, according to the grants, part of No. 8. Before the issue of the grants a building had been erected on No. 8, with its northern wall along the occupational boundary of the subdivisions, and in this wall was a window overlooking the 5 feet strip with No. 12. A building was erected on No. 12, also before the issue of the grants, with its southern wall approximately along the Crown grant boundary between the subdivisions, thus leaving the 5 feet strip between the buildings. The 5 feet strip, though forming, according to the grants, part of No. 8, was occupied with No. 12, and never was occupied or used by the owners of No. 8 or their tenants. This state of things continued down to 1876, when the building on No. 8 was pulled down and a new building put up, with its northern wall along the same line and with a number of windows in it overlooking the

5 feet strip. The strip itself, however, continued still, down to the year 1893, to be occupied with No. 12 and used as before. In 1893 the owner of No. 12 applied to have the land in their possession, including the strip forming, according to the grants, part of No. 8, brought under *The Land Transfer Act* in their names as absolute owners. The owner of No. 8 lodged a caveat. It was admitted that at the date of the application it was no longer possible to ascertain the extent or position of the window in the wall of the building on No. 8, which was pulled down in 1876, relatively to the windows in the wall of the new building then erected. *Held*, on summons for removal of caveat (1) That the fact that the owners of No. 8 were, throughout the period from 1852 to 1876, enjoying the access of light to their windows over the disputed strip did not prevent the accrual to the owners of No. 12 of a statutory title to the fee-simple of the strip by twenty years' possession; (2) That, apart from the question whether the owners of No. 8 had not abandoned any right to light acquired in 1876 by pulling down their old building and putting up a new one with different lights, the caveator was not entitled to have an easement of light over the strip recorded in the Land Register in respect of any right which he might have had in 1876, because this right was no longer capable of definition. Caveat ordered to be removed. *Ex parte SCHULTZE*, 13 N.Z. L.R. 605.

[VICTORIA, Act of 1866, s. 22].—**Owner of servient tenement already under the Act—Easement appurtenant to dominant tenement sought to be brought under the Act.**—*Per Stawell C.J. and Holroyd J., Higinbotham dissentiente*: The owner of the servient tenement cannot by virtue of his estate in such tenement forbid the registration of an easement over such servient tenement appurtenant to the dominant tenement sought to be brought under the Act, because "the land described in the advertisement" mentioned in s. 22 of the Act, No. 301, does not include the servient tenement; it only includes the dominant tenement and the easement appurtenant thereto, and in neither of these has the owner of the servient tenement any interest, and it is not sufficient that the interest is something incompatible with the rights of the servient tenement. *Per Higinbotham J.*: "The land described in the advertisement" really includes the servient tenement, and the owner of the servient tenement has therefore an interest in the "land described," &c., and may properly lodge a caveat under the 22nd section of the Act, No. 301, against the registration of the easement. *Re BYRNE, Ex parte METROPOLITAN PERMANENT, &C., SOCIETY*, 10 V.L.R. (L.) 361, 6 A.L.T. 171. (Full Court.)

(c.) *Lapse and Removal of Caveat.*

[Q., Act of 1861, s. 25].—**Lapse.**—The caveat is safe if proceedings are adopted before the end of three months, and when the final decision of the question is not intended to be within three months, or any other time, the proceedings once commenced are left to their natural issue. *In re HODGSON'S CAVEAT*, No. 774, B.C.R., 30th May, 1873.

[N.S.W., Act of 1862, ss. 16, 18].—**Lapse of caveat—Notice of application.**—The Registrar served notices upon certain persons, in accordance

with s. 18 of *The Real Property Act*, but not until after the expiration of the time limited by the Commissioners for the filing of caveats under s. 16. *Held*, that the notices were bad, and an injunction restraining the defendant from applying for a certificate of title was granted till the hearing, notwithstanding that the plaintiff's caveat had lapsed. *CHAPPELL v. BROUGHTON*, 11 N.S.W.L.R. (Eq.) 65, 6 W.N. 69, 121. (Full Court.)

[N.S.W., ACT OF 1862, s. 16.]—*Lapse of caveat.—Time for lodging cannot be extended.*—The Commissioners having under s. 16 fixed a date by which caveats are to be lodged have no power to extend the time or fix another and later date. *Re BROUGHTON*, 6 W.N. (N.S.W.) 43. (Full Court.)

[N.S.W., ACT OF 1862, s. 23.]—*Lapse—Proceedings within three months—Acts shortening Acts* (16 Vic., No. 1 and 22 Vic., No. 12)—*Case of exigency.*—By s. 6 of *The Acts Shortening Act* (16 Vic., No. 1), "months" in s. 23 of *The Real Property Act* means calendar months. Section 11 of *The Acts Shortening Act* (22 Vic., No. 12) does not apply to cases where there is a lapse of caveat under s. 239 of *The Real Property Act*. *In re CHISHOLM (BROUGHTON, CAVEATOR)*, 6 W.N. (N.S.W.) 19. (Full Court.)

[N.S.W., ACT OF 1862, s. 23, and ACT OF 1878, s. 4.]—*Lapse of caveat.*—Under *The Real Property Act*, 1862, s. 23, as amended by the *Amending Act*, 1877, s. 4, a caveat lapses unless within three months proceedings have been taken to establish a title to the land in dispute, or an order has been obtained restraining the Registrar from bringing the land under the Act. *In re CAIRD*, 9 N.S.W.L.R. (L.) 424. (Full Court.)

[N.S.W., ACT OF 1862, s. 23.]—*Lapse of caveat.—Misleading notice by Registrar.*—Where a caveator, by error common to the legal profession generally, and caused by a misleading notice issued to him by the Registrar, has allowed his caveat to lapse, the Court of Equity has no power to revive the caveat or to restrain the applicant or the Registrar from proceeding with the application. *CLISSOLD v. BELLOMI*, 10 N.S.W.L.R. (Eq.) 187. (Full Court.)

[N.S.W.]—*Lapse of caveat—Order restraining Registrar-General—Power of a single judge in vacation.*—An order restraining the Registrar-General from proceeding with an application to bring lands under *The Real Property Act* made by a single judge in vacation, under 4 Vic., No. 22, s. 27, and subsequently confirmed in due course, keeps the caveat alive. *Re MORRICE (COMBIE, CAVEATOR)*, 15 N.S.W.L.R. (L.) 107. (Full Court.)

[VICTORIA, ACT OF 1866, s. 24.]—*Lapse of caveat—Order of a judge—Jurisdiction of a judge in chambers.*—The "order of a judge" in Act No. 301, s. 24, does not mean the order of a judge in chambers. The only way to read s. 24, which prevents the lapsing of a caveat if an order is served upon the Registrar restraining him from bringing land under the Act, is that the caveator must bring an action of ejectment or file a bill in equity. *In re POWER*, 6 W.W. AND A'B. (L.) 81.

[VICTORIA, ACT OF 1866, s. 24.]—*Lapse of caveat—Power of Court to restrain Registrar from bringing land under the Act.*—

Where a person is seeking to oppose the bringing of land under the Act, and after the expiration of his caveat has no remedy by ejectment or in equity, the Court will, on a rule nisi, restrain the Registrar under s. 24 of No. 301 from bringing the land under the Act. *Ex parte GUNN*, 3 V.L.R. (L.) 36. (Full Court.)

[VICTORIA, ACT OF 1866, s. 24.]—*Lapse of caveat—Order to restrain Registrar.*—After the lapse of a caveat, the court or judge has no power to make an order under s. 24 restraining the Registrar from bringing land under the Act. *Ex parte AYLWIN*, 4 V.L.R. (L.) 116. (Full Court.)

[VICTORIA, ACT OF 1866, ss. 23, 24.]—*Lapse prevented by writ of ejectment.*—Caveator had issued writ of ejectment within the month allowed him after lodging caveat, but had not served writ. Applicant obtained rule nisi under s. 23. *Held*, that to take proceedings under s. 24 means to commence proceedings, and as caveator had issued the writ the rule was discharged. *In re SLACK'S CAVEAT*, 5 A.J.R. 83. (Full Court.)

[TAS., ACT OF 1862, s. 24.]—*Lapse—Application under Claims to Grant of Lands Act—Proceeding in Court of competent jurisdiction.*—Where a caveator under *The Real Property Act* is in a position to claim a grant under *The Claims to Grants of Land Act* his application under the latter Act, if made in time, is "a proceeding in a Court of competent jurisdiction" within s. 24 of *The Real Property Act*, and prevents his caveat from lapsing. In 1883 B. appealed to the Court for the issue of a grant to him. A caveat was filed by C. on the ground that he had previously applied under *The Real Property Act* for a grant of the same land, that B. had entered a caveat thereto, but that B.'s caveat had lapsed under s. 24 of *The Real Property Act* as he had allowed three months to elapse without taking any proceedings except applying for a grant under the Claims Act. *Held*, that the Claims Court was a Court of competent jurisdiction within the meaning of the section, but only where the caveator is in a position to apply for a grant. The right to apply under the Claims Act exists independently of the right to caveat under *The Real Property Act*, and the one right is not lost by the exercise of the other. *BRANSGROVE v. COZENS*, July 18, 1894, Tas. Dig., col. 105.

[N.Z., ACT OF 1885, s. 145.]—*Lapse—Proceedings to establish title to land—Motion for injunction.*—Issuing a statement of claim under Rule 456 and serving notice of motion for injunction are not "proceedings to establish title" within the meaning of s. 145 of the Act of 1885. The words in the section "shall have obtained from the Supreme Court an order or injunction within three months" are not complied with by, within three months, giving notice of intention to apply for such order or injunction on a day after the expiration of the three months. *SCHNAUER v. CONGREGATIONAL UNION OF NEW ZEALAND*, 12 N.Z.L.R. 66.

[N.S.W., ACT OF 1862, ss. 21-23, 122.]—*Lapse of caveat—Alleged fraud of applicant—Caveat—Limitation of actions.*—The plaintiff had lodged a caveat against defendant's application to bring land under the Act, but had allowed such caveat to lapse, and now applied for an

injunction to restrain defendant from proceeding with his application, alleging that he had been guilty of fraud in suppressing certain material facts. The Court refused the application on the ground that by s. 122 (dealing with limitation of actions), plaintiff would have no rights against defendant if the certificate of title issued, and, consequently, had no claim to an injunction. *BELL v. BECKMAN*, 10 N.S.W.L.R. (Eq.) 251.

[N.S.W., ACT OF 1862, ss. 21, 23; AMENDING ACT, 1878, s. 4.]—Lapse, waiver of—*Case stated—Trial of issues.*—P. applied to bring lands under the Act, and M. duly lodged a caveat. P. then stated a case under the Amending Act of 1878, s. 4. M. took no steps to keep the caveat alive as required by s. 23 of the Principal Act. After the lapse of three months M., in pursuance of an order of the Court, made on the application of P., stated a case. The issues were tried, and a verdict found for M. P. then applied to the Court for a rule *nisi* for a new trial, and his application was refused. He appealed to the Privy Council against the decision of the Court, and the appeal was dismissed. After these proceedings had been taken P., finding that M. had taken no steps to keep the caveat alive, applied to the Court for an order that the caveat might be removed, on the ground that M. had failed to take proceedings as provided by s. 23 of *The Real Property Act*. *Held* (per Darley C.J., and Foster J., Innes J., *dubitante*), that this application should be refused, inasmuch as P. must be considered to have waived his right to raise this point by reason of his having taken all these proceedings. *PHILLIPS v. MARTIN*, 11 N.S.W.L.R. 153. (Full Court).

[N.S.W., ACT OF 1862, ss. 21-23, 82; AMENDING ACT, 1878, s. 4.]—Lapse, waiver of—*Removal of lapsed Caveat.*—Although a caveat has lapsed under s. 23 of *The Real Property Act*, the Court will make an order for its removal under s. 82. A caveat was lodged in 1887, and lapsed under s. 23 of *The Real Property Act* on the expiration of three months. After such lapse the applicant stated a case under s. 4 of the Amending Act of 1878, and obtained an order directing the caveator to state his case, which he did on 18th November, 1887. Nothing more was done in the matter for nearly three years, when the applicant now applied for an order to remove the caveat under s. 82 of *The Real Property Act*. *Held* (*dissentiente*, Stephen J.), that he was entitled to the order, and that the fact of the applicant having taken a step after the lapse of the caveat was no waiver, and created no equity in the caveator. *In re MCINTOSH*, 11 N.S.W.L.R. 283. (Full Court). [*Sed vide* NEXT CASE.]

[N.S.W., ACT OF 1862, ss. 22, 23; ACT OF 1878, s. 4.]—Lapse, waiver of.—M. applied to bring certain lands under *The Real Property Act*, and W. lodged a caveat against his application. W. took no steps to keep the caveat alive, and M., more than three months after the lodging of the caveat, stated a case and obtained an order directing that W. should state her case, which the caveator did. Nothing was then done in the matter until nearly three years afterwards, when M. applied for an order to remove the caveat on the ground that it had lapsed (s. 23.) *Held*, reversing the decision of the Full Court (11 N.S.W. L.R. 283), that M., by stating his case and obtaining an order directing the caveator to file her

case, had waived his rights to have the caveat set aside as lapsed under s. 23. *PHILLIPS v. MARTIN*, 11 N.S.W.L.R. 153 approved. *In re MCINTOSH* (Wilson, caveator) (1894) 15 N.S.W. L.R. 70; *WILSON v. MCINTOSH*, 1894 A.C. 129.

[N.S.W., ACT OF 1862, ss. 21-23.]—Lapse, waiver of.—On an application to set aside an order (whereby the Registrar was restrained from bringing certain lands under *The Real Property Act*), on the ground that the Court had no power to make the order, as the caveat had lapsed by reason of the notice required by s. 23 of *The Real Property Act* not having been given to the Registrar, it was contended, first, that that part of the section which provides for the notice was directory, and not imperative; and, secondly, that the applicant had waived his right to raise that point, as the caveator had issued a writ of ejectment, and the applicant had appeared to the writ. *Held*, that the caveat had lapsed by reason of the failure to give the required notice, and that the applicant, being unaware, at the time he appeared to the writ of ejectment, that notice had not been given, could not be said to have waived the point. *NICHOLLS v. LEE*, 11 N.S.W.L.R. 122. (Full Court).

[N.Z., ACT OF 1870, s. 89; *see now* ACT OF 1885, ss. 145 *et seq.*]—Order to prevent lapse—*Ex parte.*—An order under s. 89 of *The Land Transfer Act*, 1870, to prevent the lapsing of a caveat, cannot be made *ex parte*. *In re LE COMTE*, N.Z.L.R. 4 S.C. 340.

[VICTORIA, ACT OF 1866, ss. 22-24.]—Removal of caveat.—*Service of rule nisi—Address of caveator.*—A caveat was lodged under s. 22, and in it the business place of address of caveator was specified. Applicant obtained a rule *nisi* calling upon caveator to show cause why the caveat should not be removed, and the rule was made absolute on an affidavit that notice of the rule *nisi* had been served at the address of caveator. It was, however, proved that service had been effected by leaving notice at the address named after business hours. *Held* by Full Court (Barry J. *dissentiente*) that the provisions of the Act as to service must be strictly followed, and service of the rule *nisi* was bad, nor was the defect cured by the admission of the caveator that he had received it two days before it was returnable. Rule absolute set aside. *In re SLACK*, 1 V.L.R. (L.) 319. (Full Court.)

[N.S.W., ACT OF 1862, ss. 21-23, and s. 82.]—Removal of caveat—*Classes of caveats*—(a.) Caveat against application to bring land under Act—(b.) Caveat against dealing with land under Act—Application of s. 82 to both classes—*Summons to caveator to show cause.*—M. claiming to be entitled to certain land, of which he was not in actual occupation, applied to bring it under *The Real Property Act*, whereupon B. lodged in the Registrar's office a caveat under s. 21 in respect of portion of the said land, and also commenced in action under s. 23, but took no further proceedings for ten months, nor was the summons in the action ever served on M. *Held*, (Hargrave J. *dissentiente*) that the words "such caveat" in the 82nd section are to be read as if they were "any caveat," and that the rule *nisi* for the removal of the caveat should be made absolute unless the caveator took steps to maintain the action in a reasonable time. *Ex*

parte MACINTOSH, *In re* BARNES, 10 S.C.R. (N.S.W.) 146. (Full Court.)

[N.S.W., Act of 1862, ss. 21-23, AND s. 82.]—**Removal of caveat—No steps to maintain action.**—A caveat was lodged on 21st January, 1876. A writ of summons was issued on 28th April, and was renewed from time to time but never served. Rule *nisi* to remove caveat under s. 82 made absolute with costs. *Ex parte* PENNINGTON, Knox 317. (Full Court.)

[N.S.W., Act of 1862, ss. 21, 82.]—**Removal of caveat—Indefinite statement of interest.**—A caveat claiming as "estate or interest" a "documentary title," was held bad for not setting out the nature of the estate, interest, lien, or charge claimed by the curafior, and was accordingly removed from the file. *In re* MITCHELL (ADAM, CAVEATOR), 16 N.S.W.L.R. (L.) 123. (Full Court.)

[N.S.W., Act of 1862, ss. 21, 23.]—**Removal of caveat—Noting encumbrances on certificate of title—Private Act of Parliament—Application by trustees under.**—The trustees appointed under *The Underwood Estate Act* having applied to the Registrar to bring certain lands comprised in that Act under *The Real Property Act* the Registrar refused to issue a certificate of title unless certain encumbrances created by the devisees under the will of James Underwood were noted on the certificate of title, and unless two caveats lodged against the application were removed. *Held*, under the terms of *The Underwood Estate Act*, that the trustees took the estate freed and discharged from all the trusts or derivative interests arising under the will, and such interests should not be noted as encumbrances on the certificate of title. *Held*, also (*diss.*, Hargrave J.), that where a writ has been issued and renewed, and there has been no service on the applicant, and the renewal has been in each case without any *præcipe*, and no further proceedings have been taken, the caveat must be removed by an application under s. 82 of *The Real Property Act*. *Ex parte* PENNINGTON, Knox 376. (Full Court.)

[N.S.W.]—**Removal of caveat lodged by Attorney-General—Crown grant—Falsa demonstratio—Refusal to send issue to a jury.**—On an application to remove a caveat which had been filed by the Attorney-General, on behalf of the Crown, it appeared that the applicants claimed the land by virtue of a grant to their predecessors in title. In the grant, which was a grant of 640 acres, "be the same more or less," the land was described as commencing at E, a fixed point, and bounded on the west by a line south 80 chains to D, also a fixed point. The line from E to D was in reality 109 chains, and taking E to D as the western boundary, the land contained about 1000 acres. *Held*, that the Court, without sending the issue to be tried by a jury, could say that the description of the length of line and quantity of land was *falsa demonstratio*, and that the western boundary was from E to D, and the Court ordered the caveat to be removed. On an issue under *The Real Property Act*, it is not competent for the Crown to set up a mistake in the clear and reasonable language of the grant. *THE BANK OF AUSTRALASIA* (APPLICANTS), *THE ATTORNEY-GENERAL* (CAVEATOR), 15 N.S.W.L.R. (L.) 256. (Full Court.)

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[N.S.W., Act of 1862, s. 82; Act of 1878, s. 4.]—**Removal of caveat—Costs—Party finally successful—Abortive proceedings.**—The caveators filed a caveat on the ground that part of the land applied for was a public highway. Both applicant and caveators filed their cases under s. 4 of the Act of 1878, and an issue was settled for trial by the Court, and set down for hearing. In consequence of a decision of the Court, in another case, that a caveat could not be filed in respect of a road, the applicant moved to rescind the order sending the issue for trial, and to remove the caveat. The Court made the order, and removed the caveat on the ground that the caveators had no sufficient interest in the land, but said nothing about costs. The prothonotary thereupon refused to tax the applicant's bill. *Held*, that the application to remove the caveat was a proceeding under s. 4; that the applicant was the "party finally successful" under that section, by which, without any special order of the Court, she was entitled to the costs of the whole proceedings, including the abortive proceedings with respect to the trial of an issue. *TIERNY v. LOXTON* (Nc. 2), 13 N.S.W.L.R. (L.) 115. (Full Court.)

[N.S.W., Act of 1862, s. 82; Act of 1878, s. 4.]—**Removal of caveat—Costs—Party finally successful.**—The caveator lodged a caveat against the bringing of certain land under *The Real Property Act*, claiming a portion of the land. The applicant, after the caveator had filed his case, took no steps to bring the land under the Act, and subsequently wrote to the caveator, saying that he was willing to withdraw the land claimed by him from his application. *Held*, that the caveator was entitled to an order directing the Registrar-General not to issue a certificate in respect of the land claimed by him, and declaring him the "party finally successful." *Re* LAURIE (APPLICANT), COHEN (CAVEATOR), 15 W.N. (N.S.W.), 168 (Full Court).

[VICTORIA, Act of 1864, s. 24; Act of 1890, s. 34.]—**Removal of caveat—Costs—Power of Court to award costs on caveat proceedings.**—The Supreme Court has power to award costs on applications in caveat proceedings. A summons in respect of a caveat against bringing land under the Act was dismissed with £3 3s. costs. *Power v. SMITH*, 6 W.W. and A'B. (L.) 81. *Quoted with approval* *In re* ANNAND, 17 V.L.R. 108, 12 A.L.T. 107.

[S.A., Act of 1861, s. 22.]—**Restraining applicant and Registrar—Erroneous declaration by applicant—Caveat by person in adverse possession—Injunction.**—G. applied to the Registrar-General to bring certain lands under the Act, and in his application, pursuant to the Act, declared that he was seised of an estate of freehold of inheritance in the said land; that he was not aware of any claim affecting the land; that no person had any claim, estate, or interest at law, or in equity in possession, or expectancy other than one H., to whom he had contracted to sell the land for £10; that there was no person in possession of the land adversely to his estate or interest therein; and that the land was then occupied by H. As a matter of fact the land was then and had for twenty years previously been in possession of S. S. entered a caveat against the application and brought this action. *Held*, that S. was entitled to an injunction to

restrain G. and the Registrar-General from bringing the land under the Act. The object of the Real Property Act is not to settle the title to land between adverse claimants, but to give a person in possession of having a good legal and equitable title to land a good title which he can transfer to a purchaser by the simple mode of conveyance provided by the Act and without going into the title, and which will enable him to dispossess any person who might come into possession of the land. *SHERIDAN v. GILLES*, 21 S.A.L.R. 7.

[N.Z. Act of 1870.]—*Restraining registration—Injunction—Caveat by person in adverse possession—Statute of Limitations.*—A person who has been in adverse possession of land for more than twenty years has an equity as against a person applying to bring the land under *The Land Transfer Act* to restrain the issue to the claimant of a certificate of title. *BOYD v. MACFARLANE*, N.Z.L.R. 1 S.C. 347.

[VICTORIA, ACT OF 1866, ss. 24, 152.]—*Restraining Registrar—Equitable jurisdiction—Caveat by purchaser from former owners—Bill by caveator—Demurrer to bill—Possession.*—A bill in equity alleged an equitable title in the plaintiffs under an agreement in writing for a price paid with the persons originally seised of land, and that defendant applied to bring that land under the Act, whereupon plaintiffs lodged a caveat against the application and brought this suit praying for a declaration of the rights of the plaintiffs and an injunction. *Held*, on demurrer, that as the bill did not negative defendant's possession, nor show that defendant claimed title, or that there was any relation or obligation between plaintiffs and defendant the bill would, apart from the Transfer of Land Statute, have been demurrable for want of equity and indistinctness, and that s. 24 of Act No. 301 does not create a new jurisdiction in Courts of Equity to protect persons having legal or equitable titles against improper registration; it merely directs such proceedings as would be right before according as the interest of the caveator is legal or equitable, and makes notice of that proceeding served upon the Registrar restrain him from acting on the application. Section 152 (giving power to make rules) makes it competent for the judges to direct the details of any special procedure under the Act. *HODGSON v. HUNTER*, 3 A.J.R. 13.

[VICTORIA, ACT OF 1866, s. 24.]—*Restraining Registrar—Equitable jurisdiction—Bill by caveator—Possession—Demurrer to bill.*—There is nothing in the Act of 1866 enabling a plaintiff to transfer a legal right to a Court of Equity, or to compel a defendant to disclose his title. Where a bill was filed by plaintiff alleging legal title to land sought to be brought under the Act by an application against which plaintiff had lodged a caveat, but alleging nothing as to possession of the land, and seeking discovery of defendant's title and an injunction against defendant and the Registrar. *Held*, on demurrer to bill, that possession by defendant might be assumed, in which case plaintiff had his remedy by ejectment. Demurrer allowed. *JAMISON v. QUINLAN*, 3 V.L.R. (Eq.) 230.

[VICTORIA, ACT OF 1866, s. 24.]—*Restraining Registrar—Application by tenant for life—*

Caveat by reversioner.—The plaintiff G. lent his mother (the wife of defendant R.) a sum of £100 in part payment of the purchase money of certain land. The Crown grant was issued to R. and the southern half of the land was conveyed to plaintiff as for £100 paid. Plaintiff entered into possession of this part of the land, and built a house upon it. He afterwards lost the deed of conveyance, and subsequently, in August, 1870, executed a deed of grant of the land to R. and his wife for their several lives. R. kept this document in his possession, and some years later he and his wife applied to bring the land under the Transfer of Land Statute. Plaintiff lodged a caveat and commenced a suit to restrain the Registrar from complying with the application. *Held*, that as there was privity between plaintiff and defendants (R. and wife) and the plaintiff could not bring an action of ejectment against the defendants, he was entitled to restrain the Registrar under s. 24. A permanent injunction was also granted against defendants, under the prayer, for general relief. *GERAGHTY v. RUSSELL*, 5 A.J.R. 89, 90.

[VICTORIA, ACT OF 1866, s. 24.]—*Restraining registration—Jurisdiction of Court—No suit or action by caveator—Notice to applicant unnecessary.*—Under s. 24 of the Act the Court has jurisdiction to interfere and prevent an injustice being done whether a suit in equity or action at law has been commenced or not. It is not necessary to serve notice of an application for an order to restrain the Registrar upon the person who is applying to bring the land under the Act. Notice to the Registrar is sufficient. *Ex parte BEISSEL*, 5 V.L.R. (L.) 53, 57.

[VICTORIA, ACT OF 1866, s. 24.]—*Restraining registration—Injunction—Lost will—Trial of title at law.*—A. died in 1853, leaving a widow and six children—two daughters, a son W., a son (plaintiff), a son T., and a son (defendant). There was long in the widow's possession a document purporting to be the will of A., dated 1850, and with an imperfect attestation clause. By this certain land was devised to the defendant. W. died in 1868, being of full age, intestate, without having claimed any of A.'s property, and leaving plaintiff as heir-at-law. In 1874 the widow died, and left the land (the subject of the action) to the plaintiff by a will which was duly proved by plaintiff. In 1874 plaintiff got administration of W.'s estate, and in 1878 obtained a rule to administer A.'s estate. In 1874 defendant A. got possession of the land and conveyed it to defendant H. Plaintiff brought this suit against defendants A. and H. and the Registrar, to restrain the Registrar from bringing the land under the Act. *Held*, that if A.'s supposed will was invalid, plaintiff's title as heir-at-law was clear, and he was therefore entitled to an injunction until further order, so that there might be an opportunity of trying the title at law. *ARCHIBALD v. ARCHIBALD*, 5 V.L.R. (Eq.) 180.

[VICTORIA, ACT OF 1866, s. 24.]—*Restraining Registrar—How order obtained in vacation.*—An order under s. 24, restraining the Registrar from bringing land under the Act, may be obtained in vacation from a Judge in Chambers, although the caveator may proceed by bill in equity. *Ex parte MAHONEY*, 1 A.L.T. 132.

[QUEENSLAND, ACT OF 1866, s. 25].—Withdrawal of caveat—*Security*.—A caveat ought not to be employed to put a blot on the title, but to establish the right of a caveator. An order was made to withdraw a caveat on security being given to the satisfaction of the Registrar to cover any possible amount of claim which the caveator might have, such security to become void if the caveator took no proceedings before the lapse of the three months mentioned in s. 25 of the Act. *In re HODGSON'S CAVEAT*, B.C.R., 30th May, 1873. *Followed In re BRAMSTON*, *Ex parte EDE*, B.C.R. 24th July, 1873.

Withdrawal of caveat.—*See also In re LETHBRIDGE v. MITCHELL*, 8 N.S.W.L.R. 249 (*post* (d) *Trial of issues*).

(d) *Trial of issues between conflicting claimants.*

[N.S.W., ACT OF 1862, ss. 21-23; AMENDING ACT, 1878, s. 4].—Burden of proof—*Caveators in possession made defendants*—*Issues*.—A caveator may put in issue any document in the applicant's chain of title. *Quære*: Whether, when the caveator is in possession, *The Amending Act* of 1877, s. 4, throws the onus of proof on the applicant. Caveators in possession made defendants. *Re DOUST*, 2 N.S.W.L.R. (L.) 299. (Full Court.)

[N.S.W., ACTS OF 1862 AND 1878].—Burden of proof—*Caveator in possession*.—On an application to bring land under *The Real Property Acts*, when the applicant shows a complete documentary title, and proves that he was in possession within twenty years before the commencement of the proceedings, the burden of proof to defeat the applicant's title is on the caveator in possession. *SOLLING v. BROUGHTON* (No. 1), 1893 A.C. 556.

[N.S.W., ACT OF 1878].—Burden of proof—*Caveator in possession*.—In a case under *The Real Property Act* where the applicant claimed the land by a documentary title, and the caveator claimed by possession, the Court ordered the caveator to be plaintiff, and refused to allow an issue questioning the title of the applicant. *In re MARKS* (applicant), *BUTTSWORTH* (caveator), 10 N.S.W. (W.N.) 182. (Full Court.)

[N.S.W., ACT OF 1862, ss. 21-23; AMENDING ACT, 1878, s. 4].—Dedication—*Finding of jury*—*Direction to Registrar*.—Where the jury on an issue, under s. 4 of the Amending Act of 1878, found in favour of the caveator that the land in question was a public recreation ground, the Court declared the land so dedicated, and ordered that the Registrar-General should make such entries in his books, and on any certificate that should be issued, and should take such other steps as would give effect to the judgment of the Court. *SADDINGTON v. HACKETT*, 1 N.S.W.L.R. 155. (Full Court.)

[N.S.W., ACT OF 1862, ss. 21-23; AMENDING ACT, 1878, s. 4].—Dedication to the public—*Witness de bene esse*.—The applicant sought to register a semi-circular segment of land lying between the circular road of W. Crescent and the main road. The caveators were owners of allotments on the other side of the circular road. The following issues were ordered:—(1) Whether the applicant's title was good from a certain date; (2) Whether the segment had been dedicated to the public; (3) Whether the portions of the segment opposite the allotments

were respectively appurtenant thereto; (4) Whether the applicant's title had been destroyed by the Statute of Limitations. The applicant was made plaintiff. *Quære*: Whether an order from the Full Court is necessary for the examination of a witness *de bene esse* in a real property issue? *Re O'BRIEN*, 2 N.S.W.L.R. 301. (Full Court.)

[N.S.W., ACT OF 1862, ss. 21-23; AMENDING ACT, 1878, s. 4].—Delay—Costs.—On an application to remove a caveat, it appeared that the issues had been settled, and the caveator made plaintiff. The plaintiff delaying the trial, notice to proceed was given under *The Common Law Procedure Act* of 1853, s. 91, and the caveator not setting the case down, judgment was signed. The Court allowed the caveator to retain his caveat on condition that the issues were set down for trial at once, and ordered the caveator to pay the costs of signing judgment and of the application. *In re EYLES*, 2 W.N. (N.S.W.) 110. (Full Court.)

[N.S.W., ACT OF 1862, ss. 21-23; AMENDING ACT, 1878, s. 4].—Equitable issue—*Caveators out of possession made plaintiffs*.—The Court will direct an issue to a jury as to a trust or other equitable question raised by caveators. Caveators on whom onus of proof lies, and who are out of possession, made plaintiffs. *In re RATTRAY*, 2 N.S.W.L.R. 303. (Full Court.)

[N.S.W., ACT OF 1862, ss. 21-23; AMENDING ACT, 1878, s. 4].—Evidence—*Plan*.—At the trial of a real property issue, the question being mainly as to the true position of the dividing line of two grants, a plan prepared by a surveyor in Government employ, but without the knowledge of the plaintiff's predecessors in title, and also a parish map, both plan and map being in possession of the Lands Department, were tendered by defendant and rejected. *Held*, that they were rightly rejected. *SMITH v. NEILL*, 10 N.S.W.L.R. 171. (Full Court.)

[N.S.W., ACT OF 1862, s. 23; AMENDING ACT, 1878, s. 4].—Jurisdiction of single judge.—A single judge has *proprio vigore* no power to make an order under *The Real Property Act*, s. 23, and the Amending Act of 1878, s. 4, restraining the Registrar from bringing the land under the Act; and if he makes such an order as for the Full Court in vacation, or in a case of urgency under the Act 4 Vic., No. 22, s. 27, it requires confirmation. *In re MACKENZIE*, 11 N.S.W.L.R. (C.L.) 277. (Full Court.)

[N.S.W., ACTS OF 1862 AND 1878].—Jurisdiction of Court—*Costs*.—On an application by the caveator, who had filed a case for an order directing the applicant to file a case, the Court dismissed the application with costs, holding that it had no power to make the order. *In re WILSON*, 8 W.N. (N.S.W.) 54. (Full Court.)

[N.S.W., ACT OF 1862, ss. 21-23; AMENDING ACT, 1878, s. 4].—Negligence of attorney in not filing case—*Caveat removed*—*Leave to refile caveat*—*Costs*.—The Court ordered the caveator to take the caveat off the file, on the ground that he had not filed his case within the time specified in the order of the Court in that behalf, but on it subsequently appearing that it was owing to the negligence of the attorney who was acting for him that the case had not been filed, the Court set aside the order and gave the

caveator ten days within which to file his case. Costs of this application to abide the result of the inquiry into the title. *In re JONES*, 2 W.N. (N.S.W.) 74, 84. (Full Court.)

[N.S.W., ACT OF 1862, ss. 21-23; AMENDING ACT, 1878, s. 4.]—*New trial of issues—Plaintiff fails—Amended issues.*—In a real property issue the defendant (caveator) is not entitled to a verdict merely because the plaintiff fails to prove his title. Case ordered to be reheard with amended issues. Question of costs reserved; as to which see same case, 7 N.S.W.L.R. (C.L.) 369, post under this heading. *JONES v. HILL*, 2 W.N. (N.S.W.) 11. (Full Court.)

[N.S.W., AMENDING ACT, 1878, s. 4.]—*New trial of issues—Costs of—Power of amending order—"Party finally successful."*—At the first trial of issues the jury found for defendant (see ante under this heading). The Court amended the issue and directed a new trial, but reserved the question of costs. On the second trial the jury found for plaintiff. The Court discharged a rule nisi for a new trial, giving plaintiff costs of the second trial and of the second new trial motion, but ordering each party to bear his own costs of the first trial and of the first new trial motion. The Court, on motion, amended the order by directing that the defendant should also pay the costs of the first trial and of the first new trial motion, holding that it had no power, looking at s. 4 of the Amending Act, to deprive the plaintiff, who was "the party finally successful" of his costs. The rule of Queen's Bench, Hilary Term, 3 Jac. I., does not stand in the way of the Court so amending its order and giving a party the right conferred on him by statute. *JONES v. HILL*, 7 N.S.W.L.R. (L.) 369. (Full Court.)

[N.S.W.]—*Non-admission of fact by caveator.*—The applicant's case stated a fact, as to which the caveator's case said: "Do not know, and cannot admit." *Held*, that the caveator was entitled to an issue as to this fact. *Ex parte THOMAS*, 10 W.N. (N.S.W.) 35. (Full Court.)

[N.S.W., ACT OF 1862, ss. 21, 23; AMENDING ACT, 1878, s. 4.]—*Procedure after trial of issues—Removal of caveat.*—After verdict in an issue under *The Real Property Act* in favor of the applicant, he should first ask the caveator to remove his caveat. *Semble*, if the caveat is not removed he should apply *ex parte* for an order removing it. *Sed quare* (per Darley C.J.), whether any order is necessary. *KINSELA v. METROPOLITAN BUILDING ASSOCIATION*, 8 N.S.W. L.R. (L.) 277. (Full Court.)

[N.S.W., ACT OF 1862, ss. 21-23; AMENDING ACT, 1878, s. 4.]—*Res judicata—Caveat where ineffective would be restrained in equity.*—In 1869 John and George Lethbridge (the present applicants) applied to bring certain lands under *The Real Property Act*, alleging a title by possession for more than twenty-five years. Before this, one S. had applied to bring the same land under the Act, setting up a documentary title which was rejected by the examiner of titles. In 1876 S. conveyed the land to M. (the present caveator), who brought ejectment. The defendants (the present applicants) in that action admitted M.'s *prima facie* documentary title, but proved in themselves, as against such documentary title, a possessory title, to the satisfaction of the jury,

and obtained a verdict. A rule to set aside that verdict having been refused, M. in 1878 began a fresh action of ejectment, which he discontinued in the following year, whereupon the applicants signed judgment. They subsequently renewed their application for a certificate of title, and their title having been passed and the application advertised, M., on 25th March, 1887, lodged his caveat, and on 26th May filed his case, asking to have an issue directed to determine whether the applicants were entitled to the land by possession as claimed by them. On motion for an order for withdrawal of caveat, *Held*, that the caveat must be withdrawn, on the ground that the caveator would, under the circumstances, be restrained in equity from trying the issue if directed. Section 4 of the Amending Act of 1878 is not mandatory upon the Court to send any issue that may be raised for trial; it is for the Court to say in each case whether there are facts *bonâ fide* in contest between the parties. *In re LETHBRIDGE v. MITCHELL*, 8 N.S.W.L.R. 249. (Full Court.)

[N.S.W.]—*Security for costs—Applicant a company in liquidation—Companies Act, s. 99.*—An applicant to bring land under *The Real Property Act* applied for an order directing a caveator to file his case. The caveator consented, but asked for security as to costs, as the applicant was a company in liquidation. *Held*, that the applicant was not a plaintiff within the meaning of s. 99 of *The Companies Act*. *In re ANGLO-AUSTRALIAN INVESTMENT, FINANCE AND LAND CO., LTD.*, (CAMPBELL, CAVEATOR), 9 W.N. (N.S.W.) 128. (Full Court.)

[N.S.W., ACT OF 1862, ss. 21-23; AMENDING ACT, 1878, s. 4.]—*Settling issues—Burden of proof—Caveator in possession.*—An application was made to bring land under the Act, and the applicant's documentary title was passed by the examiners. The caveator was in possession, and set up in his caveat a possessory title. *Held*, on motion to settle issues for trial, that the caveator, not having brought forward any substantial definite objection to the applicant's documentary title, was not entitled to an issue which would put the applicant to strict proof of his title, but was bound by his caveat and must rely on his 20 years' possession. A caveator in possession is not in the same position as a defendant in ejectment. *In re LORD*, 9 N.S.W.L.R. 415. (Full Court.)

[N.S.W., ACT OF 1862, ss. 21-23; AMENDING ACT, 1878, s. 4.]—*Settling issues for trial—Burden of proof—Statute of limitations—Caveator in possession.*—Where the applicant claimed certain land by Crown grant in 1819, and by a possessory title, and the caveator claimed part of the land under a grant in 1840, the Court ordered the applicant to be plaintiff, saying that the matter was of no importance, as a real property issue was not like an action of ejectment. *Re SELDON*, 1 W.N. (N.S.W.) 77. (Full Court.)

[N.S.W., ACT OF 1862, ss. 21-23; AMENDING ACT, 1878, s. 4.]—*Settling issues—Statute of Limitations—Series of trespassers.*—In a real property issue, where the caveator was in actual possession, and claimed the land under a possessory title, the applicant who claimed under a documentary title was ordered to be plaintiff, and the issues directed to be tried were: (1) Whether the applicant has any title? (2) Whether the appli-

cant's title has been destroyed by twenty years' continuous possession in the caveator (a) prior to the application; (b) prior to the lodging of the caveat? The applicant's title is not destroyed by the mere physical possession of a series of trespassers for twenty years, and an issue raising that question was, therefore, refused. *In re BROWNING*, 7 W.N. (N.S.W.) 74, 113. (Full Court.)

[N.S.W., ACT OF 1878, s. 4.]—Statement of issues for trial—Caveator's case—Title by possession—Objections to documentary title.—Any point upon which the caveator may desire an issue to be tried must be stated in the case filed by him under 41 Vic., No. 18, s. 4. *In re AUSTIN (ARCHER, CAVEATOR)*, 13 N.S.W.L.R. (L.) 263. (Full Court.)

[N.S.W., ACT OF 1862, ss. 21, 23; AMENDING ACT, 1878, s. 4.]—Stay of execution pending appeal.—The caveators in possession having been unsuccessful plaintiffs in a real property issue under the Amending Act of 1878 appealed to the Privy Council. The Court ordered a certificate of title to issue at once to the defendant, on his undertaking not to dispossess the caveator or deal with the land so long as the appeal was diligently prosecuted. *SOLLING v. BROUGHTON*, (No. 2) 8 W.N. (N.S.W.) 45. (Full Court.)

[N.S.W., ACT OF 1862, ss. 21-23; AMENDING ACT, 1878, s. 4.]—Substitution of new caveator.—The name of a new caveator was substituted in an issue for that of his trustee, upon the terms that the new caveator should pay costs of the motion, and give security for the costs already incurred. *In re BRODZIAK*, 2 N.S.W. L.R. 305. (Full Court.) Followed *In re SMITH'S TRUSTEES*, 4 W.N. (N.S.W.) 111.

[N.S.W., ACT OF 1862, ss. 21-23; AMENDING ACT, 1878, s. 4.]—Two caveats—Issues for trial.—Where there were two caveats in respect of the same application, the Court refused to order one issue to be tried before the other, or that both should be tried together. *In re SMITH'S TRUSTEES*, 4 W.N. (N.S.W.) 111. (Full Court.)

D. DUTIES OF THE REGISTRAR

[Q., ACT OF 1861, ss. 14, 19, 25.]—Duty of Registrar-General to issue certificate of title to land improperly taken in execution.—The Registrar-General, on obtaining the assent of the Master of Titles, is at liberty, without reference to the Supreme Court, to issue certificates of title under s. 19 of the Act of 1861, in cases where land, or any estate or interest therein, appears to have been improperly taken in execution and sold under the process of the Court. Execution had been obtained against one Baxter as administrator of his father's estate, and a writ of *fi. fa.* issued on the judgment was attempted to be enforced by the sale of the land in question, to which he was entitled as heir-at-law. A purchaser from Baxter applied to bring the land under the Act, and the Court held that he was entitled so to do. *In re BAXTER* (No. 1), 1 S.C.R. (Q.) 97.

[VICTORIA, ACT OF 1866, ss. 15, 17, 19, 64; ACT OF 1878, ss. 3, 4.]—Entry of easement on certificate of title.—Although, under the Act of 1866, ss. 15, 17, 19, the Registrar, on bringing the dominant tenement under the Act, is not justified in describing an easement appurtenant

to such tenement on the certificate of title, yet it was held (overruling *Ex parte BEISSEL*, 5 V.L.R. (L.) 53) that, under the combined effects of ss. 3 and 4 of Act of 1878, taken with Act of 1866, s. 64, the Registrar has power to include by designation in the certificate of title an easement appurtenant to the dominant tenement sought to be brought under the Act over land already under the Act. *In re BYRNE, Ex parte METROPOLITAN PERMANENT BUILDING SOCIETY*, 10 V.L.R. (L.) 361, 6 A.L.T. 171. (Full Court.)

[N.Z., ACT OF 1885, s. 19.]—Inspection of title deeds lodged by applicant.—A general rule to the effect that a person satisfying the District Land Registrar that he has a good and sufficient reason for seeking information as to the nature of an applicant's title, is entitled to inspect the title deed lodged by the applicant with his application under s. 19 of the Act, between the time of the lodging of such application and the acceptance or rejection thereof, is too wide; and a Registrar should not allow inspection of an applicant's title deeds under such general rule. *In re PARISH*, 9 N.Z.L.R. 262.

[VICTORIA, ACT OF 1866, s. 135.]—Refusal of application by Registrar—Summons to Registrar—Costs of summons.—The Registrar refused to bring certain land under the Act, because he adopted the construction put upon a devise of land by the N.S.W. Court as opposed to a different construction put upon the same devise by the Victorian Court. An appeal to the Privy Council was pending against the decision of the N.S.W. Court. Held, that the Registrar was not justified in his refusal, but that he should have postponed the matter; as, however, the Registrar was the guardian of the Assurance Fund, the Court declined to certify that there was "no probable ground for such refusal" on the question of costs under s. 135. *Ex parte BOWMAN*, 7 V.L.R. (L.) 314; 3 A.L.T. 25. (Full Court.)

[N.Z., ACT OF 1885.]—Refusal of Registrar—No caveat—Disputed title.—The District Land Registrar will be supported by the Court in suspending the issue of a certificate of title until a disputed question of title can be tried, notwithstanding that no caveat has been lodged, if the result of the action might be to endanger the Assurance Fund. *In re NELSON BROTHERS*, L.R. 5 S.C. 111.

[VICTORIA.]—Refusal to receive evidence—Discrepancy between plan and description of land in Crown grant—Evidence to explain.—An application was made to bring a Crown allotment under the Act, and to include in the certificate of title more land than by admeasurements and parcels was specified in the Crown grant. As to this surplus the applicant tendered evidence to show that he was entitled, but the Registrar refused to accept it, and refused the application until the applicant could show that the plan was correct by the Lands Department issuing an "adjustment certificate." Held, that the Registrar was bound to accept all material evidence tendered, and was wrong in insisting upon an "adjustment certificate" as the only evidence which he would receive and act upon. *Ex parte ROWAN*, 9 V.L.R. (L.) 286; 5 A.L.T. 87. (Full Court.)

[N.S.W., ACT OF 1862.]—Refusal of Registrar—Application by purchaser—Agreement for sale

—*Agreement that certificate of title should issue to purchaser—No stamp duty paid.*—On an application to bring land under the Act, it appeared that the applicant purchased land under a written agreement with the vendor that the title should be brought under the Real Property Act, and that the certificate of title should issue to the purchaser. The title was approved by the examiners, and a certificate of title drawn out, but the Registrar refused to register it until stamp duty had been paid as for a conveyance of real property. *Held*, that the Registrar was not bound to register the title unless the duty was paid. The agreement for sale was the instrument by which a complete transfer in equity of the land purchased was effected, and being a "conveyance" within the meaning of s. 2 of *The Stamp Duties Act*, ought to have been stamped as such. *Ex parte CLISSOLD*, 5 N.S.W.L.R. (C.L.) 176. (Full Court.)

[Q., ACTS OF 1864 AND 1877.]—*Refusal to inquire into application by adverse possessor.*—*See Ex parte O'NEILL*, 7 Q.L.J. 155 (*supra* (B.) CAPACITY TO BRING LAND UNDER ACT.)

[TAS., ACT OF 1862, s. 110.]—*Refusal to bring land under the Act—Summons to compel recorder—Practice.*—Where, under s. 110, a proprietor summons the recorder to show the grounds of his refusal to bring land under the Act, the applicant is to begin, the recorder to have last word. *In re Cook*, July 12, 1878, Tas. Dig., col. 107.

[TAS., ACT OF 1862, s. 110.]—*Refusal to bring land under Act—Appeal—Costs.*—By s. 110 of the Real Property Act, upon an application to bring land under the Act, the recorder, if he refuse, may be required to state the grounds of his refusal to issue a certificate and be summoned before the Supreme Court. Where it was objected that the recorder is only an implement in the hands of the Land Title Commissioners, and that the Court had no power to review their decision: *Held*, that as the Act constitutes the recorder its executive officer, and as regards the public it is the recorder who issues the certificate, his decision is reviewable by the Court under this section, but his costs are to be allowed him unless his refusal was based on no probable grounds. *In re FAWNS*, June 28, 1867, Tas. Dig., col. 106.

[VICTORIA, ACT OF 1862, s. 107.]—*Refusal of Registrar to issue certificate of title—Summons to substantiate grounds of refusal—Receipt for Crown grant.*—The Registrar is not bound to issue a certificate of title to a purchaser from a Crown grantee until the purchaser signs a receipt for the duplicate Crown grant. Summons dismissed with costs. *Semle (per Barry J.)*, it is the duty of the Supreme Court, which acts as the Exchequer Court of England does in matters of revenue, to protect the revenues of the Crown in this colony. *FITZGERALD v. ARCHER*, 1 W.W. and A.B. (L.) 40. (Full Court.)

[VICTORIA, ACT OF 1866, s. 25.]—*Statute of Limitations—Real Property Statute, 1864 (No. 213), ss. 17, 18, 38, 47—Equitable mortgage—Deposit of deeds without writing.*—The Statute of Limitations is a good defence to an action to enforce a security by deposit, without writing, of title deeds to land, and to restrain the depositor and the Registrar of Titles from proceeding with an application to bring the land under the Act, where the deposit was made more than 15

years before action brought, and there has been no payment of principal or interest. *KEMP v. DOUGLAS*, 1 V.L.R. (E.) 92 followed. *BARNET v. WILLIAMS*, 15 V.L.R. 205.

E. MISCELLANEOUS CASES ON PRACTICE AND PLEADING.

[N.S.W., ACT OF 1862, ss. 21-23.]—*Action for wrongful application—Pleading—Striking out counts in declaration.*—The first count of declaration framed under ss. 21 and 23 of the Real Property Act alleged that the plaintiff was seised and in possession of land, and that the defendants knew these facts, but notwithstanding, falsely alleged themselves to be seised and in possession, and thereupon applied for a title under the Act. The second count omitted the allegation that the plaintiff was seised and the allegation of knowledge by defendants of plaintiff's title. The third count alleged both seisen and possession, but omitted the allegation that the defendants were aware of either fact. The fourth count alleged only possession in the plaintiff. In all other respects every count was the same as the first. The Acts complained of were stated in exactly the same terms, and so was the resulting damage. *Held*, on motion to strike out three of the four counts, that the plaintiff must be confined to the first count, on the ground that the four counts were founded on the same cause of action, and in violation of the *Regula Generalis*, T.T., 1853 (*Pleading*) r. 1. *STOCKDALE v. HAMILTON*, 4 S.C.R. 313. (Full Court.)

[N.S.W., ACT OF 1862, ss. 21-23.]—*Action for wrongful application—Pleading—Demurrer.*—The declaration framed under the 23rd section of the Real Property Act by a person who had entered a caveat, complained that the defendants had put him unjustifiably to expense by falsely asserting title to certain land and endeavouring to procure a certificate of title thereof, notwithstanding the fact that he was seised and entitled as they well knew. Then after stating the lodgment of his caveat and that notice of this action had been duly given, the declaration alleged that the plaintiff had instituted it in order to establish his title, and to obtain an order restraining the Registrar-General from further proceeding in the matter. *Held*, on demurrer, that the action is maintainable in its present form. The defendants pleaded, first, that the plaintiff never was, nor is he now, seised in fee-simple of the land in question; secondly, that he is not now in possession of the said land. *Held*, on demurrer, good pleas. A third plea alleged that the defendants were the persons in whom the fee-simple of the land was vested in possession *at law or in equity*, and were jointly seised of the fee-simple of the land, whereupon they made application to the Registrar-General and did declare that the fee-simple was so vested, and that they were jointly so seised, and did carry on proceedings for bringing the land under the Act and to obtain a certificate of title. *Held*, on demurrer, a bad plea, for not stating whether their title was legal or equitable. A fourth plea, traversing defendants' knowledge of plaintiff's title, also held bad. *STOCKDALE v. HAMILTON*, 5 S.C.R. 180. (Full Court.) *Sed vide* ACT OF 1878, s. 4.

[N.S.W., ACT OF 1862, ss. 21-23.]—*Action for wrongful application—Pleading.*—Where

the declaration, framed under s. 23 of *The Real Property Act*, alleged that plaintiff was seised and in possession of lands, and that defendants knew these facts, but, notwithstanding, falsely alleged themselves to be seised and in possession, and thereupon applied for a title under the Act, the Court refused to allow a new count to be added, resting plaintiff's case on possession only. *STOCKDALE v. HAMILTON*, 6 S.C.R. 261. (Full Court.)

[Tas.]—Appeal from Commissioners.—Where the Commissioners have rejected an application to bring land under *The Real Property Act*, and the Supreme Court is appealed to from this decision, the latter can only either uphold their decision or order the case to be re-tried. It has no power to order the Commissioners to accept the title on the evidence before them, so that a caveat may be lodged against it, although it may express an opinion to that effect. *RIDGE v. RECORDER OF LAND TITLES*, 9th October, 1890, Tas. Dig., col. 103.

[VICTORIA, ACT OF 1866, s. 25.]—Deeds relating to the land—*Summons for production of—Service of summons*.—All persons who have any claim upon land which is sought to be brought under the Act must have notice of a summons, issued under s. 25, to compel production of deeds. *Ex parte MORGAN*, 4 A.J.R. 117.

[VICTORIA, ACT OF 1866, s. 27; REPEALED BY ACT, 1885, see ACT 1885, s. 37.]—Deeds retained by Registrar—*Summons for production of*.—Where title deeds have been retained by the Registrar on bringing land under the Act, an order on the Registrar for their production may be made *ex parte*. *SLACK v. WINDER*, 4 A.J.R. 117. An application for such order ought to be made *ex parte*. *FISHER v. STUART*, 7 A.L.T. 45.

[VICTORIA, ACT OF 1866, s. 25.]—Deeds—*Summons for production of—Solicitor's lien*.—Where a solicitor retained deeds, claiming a lien on them for costs, and an application was made to compel their production under s. 25, held (*per Stawell C.J.*), that the matter could not be disposed of in Chambers under that section. *In re CRAIG*, 5 A.L.T. 54.

[VICTORIA, ACT OF 1862 (No. 140), ss. 21, 22, 23, 81.]—Jurisdiction of Judge in Chambers.—S. 81 of the above Act did not give a Judge in Chambers jurisdiction to deal with caveats against applications. See CAVEATS AGAINST DEALINGS (F.). *Re WILLIAMSON*, 2 W.W. AND A'B. (L.) 110.

[VICTORIA, ACT OF 1866.]—Vendor and purchaser—*Nudum pactum—Costs*.—When a bargain for the sale of land is made, and the deposit paid, without any representation that the land is under *The Transfer of Land Statute*, or any understanding on the part of the purchaser that it is so, a subsequent agreement by the vendor to pay the costs of bringing the land under the Act is *nudum pactum*, though by mistake of the vendor's agent the formal contract is drawn up with conditions applying to land under the Act. *WATSON v. WATSON*, 12 V.L.R. 438.

[VICTORIA, ACT OF 1866.]—Verbal agreement not to lodge caveat.—C. verbally promised S.,

in consideration of £600, that he would not lodge a caveat against the bringing of certain land under *The Transfer of Land Statute*; that he would assist S. in obtaining a certificate of title, and would give a transfer of his interest. C. carried out the contract as far as he could; the land was brought under the Act, an increased contribution being made to the guarantee fund, and it was agreed that £50 should be deducted from the sum to be paid to C. Held, that though C. could not recover on the agreement, as it was not in writing, he could maintain an action upon an account stated for the amount agreed to be paid him. *COKE v. SPENCE*, 2 V.L.R. (L.) 273. (Full Court.)

[Tas.]—Withdrawal of application—*Consent of Minister of Lands*.—The consent of the Minister of Lands is not necessary to enable a person to withdraw his application, which is at an end on receipt of his letter of withdrawal by Lands Department. *IRELAND v. PAYNE*, Nov. 28, 1882. Tas. Dig., col. 103.

BUILDING SOCIETY.

Covenant by mortgagor to observe rules of

See MORTGAGE—DISTRESS.

Mortgage to—Writ of execution against mortgagor.

See *SANDER v. TWIGG*, 13 V.L.R. 765, 9 A.L.T. 101; *WATSON v. ROYAL P. BUILDING SOCIETY*, 14 V.L.R. 283.

BUILDINGS.

Erected on land during lease—Covenant by lessor to pay for

See LEASE.

Erected on land after deprivation

See REMEDIES FOR DEPRIVATION.

BURDEN OF PROOF.

See EVIDENCE.

CANCELLATION.

See CERTIFICATE OF TITLE.

See FRAUD.

Action for cancellation of certificate of title

See CERTIFICATE OF TITLE.

When Registrar a necessary party to such action.

OGLV v. AEDY, 13 V.L.R. 461.

Of transfer void against trustee

See BANKRUPTCY.

Re WILDASH & HUTCHISON, *Ex parte MISKIN*, 1 Q.L.J. (Part II.) 47.

CAPACITY.

To bring land under Act

See BRINGING LAND UNDER ACT.

To lodge caveat against application

See BRINGING LAND UNDER ACT.

CAVEAT AGAINST APPLICATION TO BRING LAND UNDER ACT.

See BRINGING LAND UNDER ACT.

CAVEAT AGAINST DEALINGS WITH LAND UNDER ACT.

By assignee of insolvent estate

See BANKRUPTCY.

By equitable mortgage

See MORTGAGE—*Equitable mortgage.*

Owner of easement has no power to lodge

See EASEMENT.

LEAN v. MAURICE, 8 S.A.L.R. 119.

Right of lessee, with option to purchase, to lodge

See LEASE.

Re CLARK & HARVEY, 2 S.A.L.R. 91.

Action for improperly lodging—Damages.—Judgment for 40s. damages, without costs, not disturbed. See HAMBURGER v. CHAPPELOW, 2 W.N. (N.S.W.) 56.

CAVEAT AGAINST DEALINGS WITH LAND UNDER ACT.

A. FORM OF CAVEAT.

B. DUTIES OF REGISTRAR.

C. CAPACITY TO LODGE CAVEAT.

D. EFFECT AND DURATION.

E. LAPSE, REMOVAL OR WITHDRAWAL.

F. PRACTICE.

(1.) Jurisdiction.

(2.) Generally.

G. COSTS. (See COSTS (D).)

A. FORM OF CAVEAT.

[VICTORIA, ACT OF 1890, s. 144.]—Caveat by second mortgagee—Transfer of land to first mortgagee—Certificate of title—Land under the Transfer of Land Act being encumbered by two mortgages, the first mortgagees recovered judgment against the mortgagor and purchased at the sheriff's sale the equity of redemption of the land mortgaged. They then obtained a certificate of title having endorsed upon it the first and second mortgages. The second mortgagees lodged a caveat forbidding absolutely any dealing with the land, and claiming an interest in the land by virtue of an instrument of mortgage. Held, that the caveat was wrong in prohibiting absolutely any registration or dealing with the land, and should be so amended that the nature of the caveator's claim should be precisely stated, and that the caveat should prohibit registration of dealings until after notice to the caveator. In re VICTORIAN FARMERS' LOAN AND AGENCY CO., LIMITED, 22 V.L.R. 629, 18 A.L.T. 204, 3 A.L.R. 47. (Full Court.)

[Q., ACT OF 1861.]—Registration of judgment as caveat.—C. obtained a judgment against P. (the registered proprietor), and entered a writ of execution upon the judgment as a caveat. A summons to remove the caveat was dismissed, on the ground that registration of the judgment was not a caveat within the meaning

of the Act. PECHY v. CRAWFORD, B.C.R., 28th June, 1871.

[N.S.W., ACT OF 1862, ss. 21, 92.]—Statement of caveator's estate—Removal.—A caveat claiming as "estate or interest," a "documentary title," was held bad, for not setting out the nature of the estate, interest, lien, or charge claimed by the caveator, and was accordingly removed from the file. Re MITCHELL, (ADAM CAVEATOR) 16 N.S.W.L.R. (L.) 123. (Full Court.)

[N.S.W., ACT OF 1862, s. 21.]—Statement of caveator's estate.—A caveat in which the interest claimed was described in the words following: "claiming estate or interest under declaration of trust unregistered" held sufficient. In re THOMPSON, (ENNIS, CAVEATOR) 8 W.N. (N.S.W.) 120. (Full Court.)

B. DUTIES OF REGISTRAR.

[N.Z.]—Equitable priority.—It is not the duty of the District Land Registrar to determine questions of equitable priority. KISSLING v. MITCHELSON, N.Z.L.R. 3 C.A. 261.

[Q., ACT OF 1861.]—Proceedings in equity—By cestui que trust.—The Registrar has no authority to deal with a caveat lodged by a cestui que trust, proceedings having been taken in Equity within three months. His jurisdiction is annulled. Re BRAMSTON, Ex parte EDE, B.C.R., 31st May, 3rd June, and 24th July, 1873.

[Q., ACT OF 1861, ss. 98-102; AND ACT, 1877, ss. 38-40.]—Refusing to receive caveat—Misfeasance.—The Registrar of Titles is not liable for misfeasance in refusing to receive a caveat lodged after the expiration of the time prescribed by the notice, but before the issue of the certificate of title. He should, however, pay attention to such an application, and make inquiries, in order to protect the Assurance Fund. QUEENSLAND TRUSTEES LIMITED v. REGISTRAR OF TITLES, 5 Q.L.J. 46. (Full Court.)

C. CAPACITY TO LODGE CAVEAT.

[Q., ACT OF 1861, ss. 30, 44, 82, 87, 100.]—Assignee of insolvent—Caveat against sale of property of insolvent's wife—Life interest of husband—Fraud—28 Vic., No. 25, s. 88.—Where land under The Real Property Act is registered in the name of a married woman, the husband has a life interest in the rents and profits, and the land cannot be transferred without his concurrence. Where a husband transfers land to his wife before insolvency, the registration of the wife as proprietor is fraudulent and void as against the official assignee, who may lodge a caveat against the sale of such land. In re McLEOD, 1 S.C.R. (Q.) 173. (Full Court.)

[Q., ACT OF 1861.]—Cestui que trust.—A cestui que trust is not necessarily disqualified from lodging a caveat. Re HODGSON'S CAVEAT, No. 8, 774, B.C.R., 30th May, 1873. Followed In re BRAMSTON, Ex parte EDE, B.C.R., 24th July, 1873.

[N.Z., ACT OF 1870, s. 88.]—Cestui que trust—Unwritten trust—Summons for removal of caveat.—A wife alleging that her husband had invested her money, held upon trusts not committed to writing, in the purchase of land under The Land Transfer Act, and upon mortgage, has a right to enter a caveat to protect her interests;

and, pending the trial of an action, the Court will appoint the Registrar a receiver of the rents and profits. *D'ALBEDHYLL v. D'ALBEDHYLL*, N.Z.L.R., 3 S.C. 391.

[N.S.W., Act of 1862, s. 81.]—Claimant anterior to Crown grant.—A claimant by title antecedent to issue of original certificate cannot lodge a caveat under s. 81. *Ex parte Inwood*, 14 S.C.R. 531.

[N.S.W., Act of 1862, s. 81.]—Commissioner of stamps.—The Commissioner of Stamp Duties cannot lodge a caveat under s. 81 of *The Real Property Act of 1862*. *In re Wallis*, 2 W.N. (N.S.W.) 68.

[N.Z., Act of 1870.]—Equitable mortgagee—*Mortgage not in form in schedule*.—A registered proprietor of land under the Land Transfer Act, verbally agreed to give a mortgage to his creditor, and handed him the Crown grant. The owner died, and the administratrix executed a mortgage deed not in the form required by the Act. The land was sold by the sheriff under a writ of sale in a suit against the administratrix. The sheriff executed a transfer of the land which could not be registered without the Crown grant. The mortgagee lodged a caveat to protect his interests. *Held*, that he had an interest to support his caveat, which, therefore, would not be removed. *NEAL v. ADAMS*, N.Z.L.R. 4 S.C. 177.

[N.Z., Act of 1885, s. 138.]—Interest in proceeds of sale of land.—Section 138 of *The Land Transfer Act*, 1885, gives a caveating capacity to any person having an interest in the proceeds of the sale of land under the Act. *In re BIELFELD*, 12 N.Z.L.R. 596.

[S.A., Act of 1861.]—Judgment creditor.—A creditor on a judgment of the Supreme Court has no caveating capacity under *The Real Property Act*, 1861. *In re PALMER'S CAVEAT*, 5 S.A.L.R. 80. (Full Court.)

[S.A., Act of 1861.]—Lessee with right of purchase.—A lessee with right of purchase is not entitled before time for payment of purchase money has arrived to caveat against his landlord dealing with the property. *In re CLARK and HARVEY*, 2 S.A.L.R. 191 (Full Court). *Sed vide RUTU PEEHI v. DAVY*, 9 N.Z.L.R. 134, *sub LEASES infra*.

[VICTORIA, Act of 1866, s. 116.]—Mortgagor.—An owner of land subject to a mortgage is a person entitled to lodge a caveat against a dealing by the registered mortgagee. *DAVIES v. HENBERT*, 11 V.L.R. 386; 6 A.L.T. 19. (Full Court.)

[VICTORIA, Act of 1890, s. 145.]—Next-of-kin of lunatic.—The committee of a lunatic resident in England had power given him by the English Courts to sell the property of the lunatic in Victoria. The next-of-kin of the lunatic lodged a caveat to prevent any dealings in respect of the land. The attorney-under-power of the committee of the lunatic applied by way of motion to have the caveat removed. *Held*, that the attorney-under-power was entitled to make the application and that the next-of-kin had no power to lodge the caveat. *In re ANNAND*, 17 V.L.R. 108; 12 A.L.T. 107. (Full Court.)

[N.S.W., Act of 1862, ss. 81, 115, 126.]—Person deprived by error—*Erroneous certificate*.—A caveat under s. 81, enjoining the registered proprietor against dealing with the land,

may be filed by a person who claims to be entitled to land erroneously included in the certificate of such registered proprietor in cases where the caveator had no notice of the granting of such certificate. The proper mode of testing such claim is by ejectment under s. 115, but the caveat against dealings may also be lodged as ancillary to the proceedings in ejectment. *Ex parte SOLLING*: *CHRISHOLM*, caveator; *Ex parte SOLLING*: *HAY and NORTON*, caveators, 14 N.S.W. L.R. (L.) 399. (Full Court.)

D. EFFECT AND DURATION.

[Q., Act of 1861.]—Effect.—The only entry that can notify or protect a claim seems to be a caveat. A caveat is not actual or constructive notice to all the world of a claim, and the statute makes provision for actual notice to the person whose estate it affects. The caveat, however, prohibits any subsequent dealing under the Act, and with greater force outside the Act, in derogation of the claim it protects, if it is well founded. *In re WILDASH and HUTCHISON*, 1 Q.L.R. (Part II.) 50.

[N.Z., Act of 1870, ss. 41, 88, 89.]—Effect—*Priority of registration—Equitable jurisdiction of Court—Right of caveat*.—A caveat does no more than suspend the entry of an instrument presented for registration; it cannot affect priority of registration. *Seem*, that the Land Transfer Act does not exclude the equitable jurisdiction of the Court to deprive an applicant for registration of an advantage unduly gained. *Held* (by Prendergast C.J., and Richmond and Williams JJ.; Gillies J., dissenting), that the right of caveat conferred by s. 88 of the Land Transfer Act, 1870, was not limited to lands in settlement, but extended to any interest in registered lands. *KISSLING (District Land Registrar) v. MITCHELSON*, N.Z.L.R. 3 C.A. 261.

[Q., Acts of 1861-1877.]—Effect—*Notice—Further advances on mortgage*.—The mere lodging of a caveat is not notice of a claim to the land affected. A caveat does not affect dealings with property outside the Real Property Office. It is unnecessary for a registered mortgagee under a mortgage providing for further advances, who has had no notice of the caveat, to search the register before making a fresh advance. *QUEENSLAND TRUSTEES v. REGISTRAR OF TITLES*, 5 Q.L.J. 46.

[N.Z., Act of 1870.]—Effect—*Laches*.—A caveat lodged under the Land Transfer Act will not help a plaintiff who has lost his right through *laches*. Where a plaintiff seeks specific performance of an executory contract relating to mining property a brief delay in asserting his rights will be fatal to his claim. *BUTLER v. SADDLE HILL G.M. Co.*, N.Z.L.R. 2 S.C. 296.

[S.A., Act of 1861.]—Expiration—*Certificate obtained by fraud—Cancellation—Parties*.—A bill of complaint, filed for the purpose of setting aside a certificate of title obtained by fraud, set out, that a caveat had been lodged, forbidding the transfer of or other dealing with the land comprised in such certificate of title, the time for expiration of which caveat had been extended by judge's order "until 14th August, 1878"; that at noon on 14th August, 1878, an interim order had been obtained restraining all dealing with such land; that at 1 o'clock on the same date the Registrar-General had registered a transfer of the

said land; and that a further caveat had been lodged which the Registrar threatened and intended to disregard. *Held*, that the caveat expired on the first moment of the 14th August, and the Registrar-General had only exercised his duty in registering the transfer as above mentioned. That no facts were stated to support his alleged threat to disregard the caveat, and that he was not properly made a party to the suit. *BIGGS v. WATERHOUSE*, 12 S.A.L.R. 75.

[VICTORIA, ACT OF 1866, ss. 116, 117.]—*Extension of duration—Form of judge's order.*—Section 117 of the Act provides that caveats lodged under the provisions of the preceding section shall (with certain exceptions) be deemed to have lapsed upon the expiration of 14 days after notice given to the caveator of an application by the proprietor to deal with the land. But the section gives power to a judge upon application made before the expiration of that period to make an order delaying the registration of a dealing with the land. *Held*, that the judge's order must shew upon the face of it that it was made within the period named, and such fact must also appear in the affidavit upon which the order is made—otherwise the order is bad. *In re WISE*, 2 V.R. (L.) 111; 2 A.J.R. 69. (Full Court.)

E. LAPSE, REMOVAL OR WITHDRAWAL.

[N.Z., ACT OF 1885, s. 146.]—*Lapse—Abandonment of claim—Purchaser.*—Where a lease registrable under the provisions of the Land Transfer Act is not registered, and the lessee to prevent the sale of the premises lodges a caveat which he afterwards allows to lapse, and a transfer is registered, the purchaser is entitled to treat the claim set up in the caveat as abandoned. *Semble*, specific performance cannot in such a case be enforced by the lessee against either purchaser or vendor. *HOWELL v. UNION BANK, LIMITED*, 6 N.Z.L.R. 567.

[N.S.W., ACT OF 1862, ss. 21, 82.]—*Removal—Statement of caveator's estate or interest—Registration of Deeds Act, s. 11—Priority.*—A caveat in which the interest claimed was described in the words following: "Claiming estate or interest, one-half interest under declaration of trust, unregistered," was held sufficient, but the caveat was removed on the ground that a registered instrument took priority over the caveator's unregistered instrument. *In re THOMPSON (ERWIN, CAVEATOR)*, 8 W.N. (N.S.W.) 120. (Full Court.)

[S.A., ACT OF 1861; AMENDING ACT, 1878, s. 67.]—*Removal—Deposit of certificate of title—Unregistered mortgage.*—In February, 1872, C.F., the registered proprietor of certain land under *The Real Property Act*, deposited his certificate of title with his son W.F., as surety for a debt of £70, then due by C.F. to W.F. In May, 1875, C.F. mortgaged the same land with other land to D. and E., but this mortgage was never registered. In February, 1879, C.F. executed a memorandum of transfer of the land in question to W.F., and D. and E. lodged a caveat with the Registrar-General forbidding the registration of any instrument affecting the land. W.F. thereupon took out a summons calling upon D. and E. to show cause why the caveat should not be removed. W.F., at the time of taking the transfer, had no notice of the unregistered mortgage. *Held*, that the

unregistered mortgage was only binding on C.F. and D. and E., the immediate parties thereto, and not on W.F., and that the caveat must be removed. *Semble*, that even if W.F. had, at the time of taking the transfer, notice of the registered mortgage he would not have been affected by it, and would still have been entitled to have the caveat removed. *FRIEBE v. CULLEN*, 13 S.A.L.R. 85.

[N.Z., ACT OF 1885, ss. 144, 146.]—*Removal—Laches—Agreement for lease—Diligence in enforcing.*—Where a person claims the right to specific performance of any contract involving an interest in land under the provisions of *The Land Transfer Act*, and enters a caveat to protect that interest, he must with reasonable diligence go on to assert the right claimed, or the Court will order the caveat to be removed. *In re THOMSON AND CHIFFS, Ex parte FINDLAY*, L.R. 5 S.C. 52.

[VICTORIA, ACT OF 1862, s. 80; *cf.* ACT OF 1866, s. 116.]—*Removal—Claim of specified amount.*—A caveat was lodged claiming a lien on the land intended to be dealt with for a specified sum. On summons by the applicant to the caveator, the affidavits filed in support of the caveat also set up an absolute claim to the land under a trust. *Held*, that the caveat could not be extended to include the larger claim, and that it should be removed on payment of the specified sum. *Ex parte LYONS*, 1 W.W. & A'B. (L.) 119.

[VICTORIA, ACT OF 1866, s. 117.]—*Removal—Summons—Order on.*—On an application, under s. 117, by the registered proprietor of land to have a caveat removed, the Court will not order its removal where there is a conflict of testimony, but may order that such caveat be removed, unless steps are taken to establish caveator's title within a certain time. *Ex parte VINCENT*, 12 V.L.R. 566. (Full Court.)

[Q., ACT OF 1861, s. 99.]—*Withdrawal.*—No one but the person who lodges a caveat can withdraw it. *In re BEAUCHAMP, Ex parte KEANE*, 1 S.C.R. (Q.) 161.

[Q., ACT OF 1861, s. 99.]—*Withdrawal—Injunction.*—An order was made against the defendant for the withdrawal of a caveat within one month, which period was considered ample time for a bill to be filed in Equity for an injunction against dealing with the land, costs to be allowed to the plaintiff unless an injunction be obtained on notice within one month. *COMMERCIAL BANKING CO. OF SYDNEY v. HENRY*, B.C.R., 28th Sept., 1871.

[Q., ACT OF 1861, s. 99.]—*Withdrawal.*—The Registrar-General lodged a caveat forbidding the registration of any memorandum of transfer or other instrument affecting land. D. took out a summons for the withdrawal of the caveat against the person lodging the caveat. *Held*, that the judge had jurisdiction to hear the summons under s. 99, and that the burden of proving an applicant's title to be bad rested on the opponents, and following the case of the *Commercial Banking Co. of Sydney v. Henry* (B.C.R., 28th Sept., 1871), the caveat was ordered to be withdrawn within two months, unless an injunction should be obtained in the meantime. *In re DAVENPORT'S CAVEAT*, No. 738, B.C.R., 19th Feb., 1873.

[Q., Act of 1861, s. 11 (5).]—**Withdrawal—Caveat on behalf of Crown.**—A caveat was lodged by the Attorney-General, by the instruction of the Crown Solicitor, against any dealing with lands in certain Crown grants, on the ground that Her Majesty the Queen claimed an interest in the lands in question, and that the lands had been obtained by D. and others in fraud of the land laws of the colony. D. took out a summons, calling on the Attorney-General to show cause why the caveat should not be withdrawn. The caveat was ordered to be withdrawn by the Registrar-General. *In re DAVENPORT'S CAVEAT*, No. 775, B.C.R., 28th April, 1873.

[Q., Act of 1861, ss. 11 (5).]—**Withdrawal—Caveat lodged by Registrar—Extension of time.**—The object of a caveat is not to supersede the regular proceedings of the Court, but to give time for the application of the procedure of the Court. If the time for withdrawing the caveat (usually one month) is too limited, an application can be made to the judge on special affidavits to extend it. *In re DAVENPORT'S CAVEAT*, No. 775, B.C.R., 28th April, 1873.

[Q., Act of 1861, s. 99.]—**Withdrawal—Extension of time.**—If the time fixed by the Court for the withdrawal of a caveat is too limited, application can be made on special affidavits to extend it. Where there is no evidence that the time was insufficient, and no proceedings have been taken within the time, an order will be made for the withdrawal of the caveat. *In re DAVENPORT'S CAVEAT*, No. 775, B.C.R., 28th April, 1873.

[Q., Act of 1861, s. 99.]—**Withdrawal—Res judicata.**—The above caveat was accordingly withdrawn and another lodged by the Attorney-General, on behalf of the Crown, in the same matter, but the Court ordered that caveat to be withdrawn by the Registrar-General, on the ground that the matter was *res judicata*. *Re DAVENPORT'S CAVEAT*, No. 780, B.C.R. 14th May, 1873.

[Q., Act of 1861, s. 99.]—**Withdrawal—Onus probandi—Delay.**—The *onus probandi* is upon those who seek to withdraw a caveat; but this *onus* must not be confounded with the burden of proving a title. If the caveator's title is displaced, the person who takes out the summons must succeed. There must be a colorable title shown by the caveator—*i.e.*, a fairly arguable title, such a title as the Court or a judge will not undertake to dispose of summarily. After lodging the caveat, the caveator should not lie by until it is decided, but should show due diligence in collecting the facts on which he relies, and bring them before the judge. *In re HODGSON'S CAVEAT*, No. 773, B.C.R. 30th May, 1873.

F. PRACTICE.

(1) Jurisdiction.

[N.S.W., Act of 1862, s. 82.]—**Jurisdiction—Removal—Appeal—Notice.**—The Court has no power to delegate its functions to one of its members, and a single judge cannot therefore by delegation sit as the Court under s. 82 of *The Real Property Act*, but sits as a judge. No appeal lies from an order made by a judge under s. 82 of *The Real Property Act*. The Court has an inherent jurisdiction to, and will always, entertain an appeal from, the decision of a judge

sitting in Chambers upon a matter of procedure, but the question of removal of a caveat is not one of procedure. Notice of an application to rescind an order obtained by a caveator restraining the Registrar-General from dealing with land until further order should be given to the caveator. *In re KNIGHT*, 15 N.S.W.L.R. (L.) 315, 14 W.N. (N.S.W.) 56. (Full Court).

[N.Z., Act of 1885, ss. 144, 191.]—**Jurisdiction of Supreme Court—Caveat by Registrar—Lis pendens—Assurance Fund—Removal of caveat by Registrar—Summons—Parties.**—Where a certificate of title has been issued to an applicant proprietor, the fact of the pendency of an action which may result in a claim on the Assurance Fund, does not justify the District Land Registrar in lodging a caveat to prohibit dealings with the land. Where no fraud, concealment, or misdescription is suggested, it is not open to the Crown or its officers to call the title in question or restrain the transfer of the land. When the District Land Registrar has lodged a caveat, the Supreme Court has power on summons to order its removal. Where a caveat has improperly been lodged by the District Land Registrar, the Court can order its removal, not only at the instance of the certificated owner, but also at the instance of a purchaser from him. Such a purchaser is not, within the terms of s. 144, a registered proprietor, nor an applicant; but his case falls within s. 191, as he has a right of redress, and the Registrar has a correlative duty. The Court is not bound to look within the four corners of *The Land Transfer Act* for all the rights of property. Such rights as subsisted before the Act will generally be protected by the Court, and if machinery be not provided, the Court will use its ordinary powers. *In re TANNER*, N.Z.L.R. 5 S.C. 102.

[N.Z., Act of 1885, s. 144.]—**Jurisdiction—What questions will be determined on summons for removal—Interest to support caveat—Interest in land—Agreement to supply timber—Company—Ultra vires.**—By clause 3 of the Memorandum of Association of a Railway Company its objects were defined to be, *inter alia*: (a) All the purposes mentioned in *The Railways Construction and Land Act*, 1881; (b) to acquire by purchase, or under the provisions of the said Act or otherwise, lands and other property, real or personal, within the district through which the railway was to be constructed, and to sell and dispose of the same for profit and for the benefit of the company; (c) to do all other things incidental or conducive to the attainment of the objects aforesaid. The railway co. entered into an agreement with a timber company by which it agreed to sell to the latter all the kauri timber upon the lands to be acquired by it under the said Act, such timber to be cut into logs of a certain minimum length and girth, and to be delivered into booms in the Wairoa River. The agreement also provided that no kauri land should be sold by the railway Co. without the assent in writing of the timber company. The timber company having, in order to protect its rights under the agreement, lodged a caveat under *The Land Transfer Act* of 1885 against lands of the railway co., the latter took out a summons under s. 144, calling upon the caveators to show cause why the caveat should not be removed. By consent, the matter was adjourned from Chambers into the Supreme Court (in Banco), and thence removed into the

Court of Appeal. *Held, per curiam* (Richmond, Gillies, Williams, and Denniston JJ.), that the Court was in the same position as the judge in Chambers before whom the matter was first brought; that if the agreement on the face of it affected an interest or estate in the land, the order would be that the caveat remain on a sufficient time to allow of an action being brought to enforce it, but that the Court could not go on to decide summarily the question as to the validity of the agreement except by consent of the parties. The parties having consented to this matter being dealt with summarily: *Held, per curiam*, that the agreement was *ultra vires* of the railway co., and the caveat must be removed. *Per Gillies J.*: That, assuming the agreement to have been valid, it would have conferred no such estate or interest in the land as would have entitled the timber company to lodge a caveat. *Sed quere*, Whether this would have been so, *per Gillies and Denniston JJ.* *In re KAURI TIMBER Co. (C.A.)* 7 N.Z.L.R. 452.

[N.S.W., Act of 1862, s. 82.]—Jurisdiction of the Equity Court—*Summons to remove caveat—Supreme Court or a judge thereof.*—*Quere*, whether the Supreme Court in its equitable jurisdiction has jurisdiction to remove a caveat under s. 82 of *The Real Property Act*. The chief judge in equity as one of the judges of the court has jurisdiction under s. 82, provided the summons is issued in the manner provided by R. 11 of the Common Law Rules of February 23, 1856. *In re LEE'S CAVEAT*, 15 W.N. (N.S.W.) 40.

[VICTORIA, ACT OF 1862 (No. 140) ss. 21, 22, 23, 81.]—Jurisdiction of judge in chambers—*Caveats against applications—Caveats against dealings.*—Section 81 of Act No. 140, does not give jurisdiction to a judge in chambers to deal with matters of such vast importance as might arise under a caveat against the first bringing of land under the operation of the Act. That remedy only applies in the case of caveats as to dealing with land under the Act, and not to caveats under ss. 21, 22, 23. *In re WILLIAMSON*, 2 W.W. and A.B. (L.) 110.

[N.B.—Section 81 of Act No. 140, did not give the power of summoning the caveator contained in s. 23 of Act No. 301].

[VICTORIA, ACT OF 1866, s. 117.]—Jurisdiction of judge in chambers—*Judicature Act*, 1883, s. 10 (7)—*Removal of caveat.*—When the Full Court is not sitting, a judge in chambers, if satisfied with the urgency of the matter, may hear and determine an application to remove a caveat. *In re JOHNSON*, 10 A.L.T. 1.

[VICTORIA, ACT OF 1866.]—Jurisdiction of County Court.—Has the County Court jurisdiction to deal with matters arising out of caveats under the Act? *McCLUSKEY v. FRAME*, 13 V.L.R. 93.

[N.Z., ACT OF 1885, s. 146.]—Registrar of Supreme Court extending time—*The Supreme Court Practice and Procedure Acts Amendment Act*, 1893, s. 4—*Jurisdiction.*—A Registrar of the Supreme Court sitting in chambers under s. 4 of *The Supreme Court Practice and Procedure Acts Amendment Act*, 1893, has jurisdiction to entertain an application for an order to revive caveat which s. 146 of *The Land Transfer Act*, 1885, provides shall be made to the Supreme

Court, or a judge thereof. *In re McLEAN, Ex parte THE BANK OF NEW SOUTH WALES*, 16 N.Z.L.R. 470.

(2) Generally.

[N.Z., Act of 1885, s. 147.]—Action for lodging caveat without reasonable cause—*The Railway Construction and Land Act*, 1881—*Railway company—Agreement to sell timber—Presumption of legal knowledge—Burden of proof.*—A railway company entered into an agreement with a timber company for the sale to the timber company of all kauri timber on the lands selected by the railway company under *The Railways Construction Act*, 1881, the timber to be cut into logs of a specific size by the railway company, and transported to a certain place for delivery. The agreement also provided for certain advances of money to be made by the timber company to the railway company for the purposes of railway construction, such advances to be secured by mortgages over the lands acquired. Subsequently, the timber company refused to advance the money required by the railway company under the agreement, on the ground that this stipulation was outside the borrowing powers of the railway company. The railway company thereupon gave notice terminating the agreement, and the timber company lodged a caveat, under *The Land Transfer Act*, 1885, against the lands selected. The railway company obtained an order of the Court of Appeal for the removal of the caveat, the Court holding that the agreement entered into was *ultra vires* of the railway company, which was not authorised by its memorandum of association to sell the timber in the manner provided for by the agreement. (*See In re Kauri Timber Co. supra.*) In an action brought under s. 147 of *The Land Transfer Act*, 1885, for damages sustained by the railway company through the timber company lodging the caveat without reasonable cause, *Held*: (1) That persons in dealing with a corporate body are not bound to make themselves acquainted with the legal effect of every word contained in the memorandum of association; (2) That in the present case, though the plaintiffs had not the power to cut the timber and sell it as a chattel, they could sell it when unsevered from the soil; (3) That the distinction which arose between the power possessed by the plaintiffs to sell the standing timber to be cut by the vendee, and not having the power to cut and sell it themselves, required more legal knowledge than could reasonably have been expected from the defendants; (4) That the burden of proof lies with the party alleging the want of reasonable cause, and that the circumstances of the present case showed no want of reasonable cause on the part of the defendants. *KAIHU VALLEY RAILWAY COMPANY, LIMITED v. KAURI TIMBER COMPANY, LIMITED*, 11 N.Z.L.R. 403.

[VICTORIA, ACT OF 1866, s. 117.]—Affidavit—*When to be filed—Caveat—Removal of—Summons, how signed.*—On an application to remove a caveat it is not necessary that the summons should be signed by the judge in chambers—the signature of the associate is sufficient. Nor is it necessary that an affidavit in support of such summons should be filed upon the issue of the summons. It is sufficient if it be filed a reasonable time before the return of the summons. *In re WALL, Ex parte PEARSON*, 13 V.L.R. 484; 9 A.L.T. 43. (Full Court.)

[VICTORIA, ACT OF 1886, s. 117.]—*Appeal—Dismissal of action by caveator—Injunction pending appeal.*—Where a caveat had been lodged against the registration of a transfer and an action in support of it had been dismissed, but an appeal from such dismissal had been lodged, the Registrar was restrained from registering any dealing by the transferees, and the transferees were restrained from dealing, pending the determination of the appeal, on security being given to indemnify them against any damage arising from such restraint should the appeal be dismissed. *RISMONDO v. RISMONDO*, 12 V.L.R. 1. (Full Court.)

[N.Z., ACT OF 1870, s. 89; cf. ACT OF 1885, s. 145 *et seq.*]—*Ex parte order.*—An order under s. 89 of *The Land Transfer Act*, 1870, to prevent the lapsing of a caveat, cannot be made *ex parte*. *In re LE COMTE*, N.Z.L.R., 4 S.C. 340.

[VICTORIA, ACT OF 1890, s. 145.]—*Motion or summons.*—Proceedings under s. 145 of the Victorian Act of 1890, for removal of a caveat, may be taken either by way of motion or summons. *In re ANNAND*, 17 V.L.R. 108, 12 A.L.T. 107. (Full Court.)

[N.S.W., ACT OF 1862, ss. 33, 81, 126.]—*Procedure—Foreshore.*—The caveator had leased for 21 years, with the right of renewal for a like period from the then owners about the year 1862 a portion of land at North Shore, bounded by high water mark. Dibbs purchased the land, and subsequently obtained a Crown grant of the foreshore. In 1876 he procured a certificate of title of the purchased land. In 1879 Dibbs conveyed the purchased land and the foreshore to his son, T. B. Dibbs, who took out a single certificate of title for both. In 1882 the caveator gave notice of renewal of lease of land including the foreshore. T. B. Dibbs refused to include the foreshore, and the caveat was then lodged to prevent him dealing with it. The renewal of the lease was noted on the certificate of title. *Held*, that filing of caveat was improper, and the caveator should have proceeded under s. 126. *In re HAYTON, Ex parte DIBBS*, 1 W.N. (N.S.W.) 17. (Full Court.)

[N.Z., ACT OF 1885, s. 144.]—*Procedure—Summons—Action for specific relief.*—A claim by a caveator to have a lease executed in accordance with an agreement made by a former registered proprietor will not be decided on summons under s. 144 of *The Land Transfer Act*, 1885. The proper remedy is an action for specific relief. *In re THOMSON AND CHIPPS, Ex parte FINDLAY*, N.Z.L.R. 5 S.C. 52.

N.Z., ACT OF 1870, ss. 88, 89, 115.]—*Procedure—Summons for removal—Conflicting evidence—Necessity for suit—Extension of caveat—Undertaking as to damages.*—Where a lessee of land under the provisions of *The Land Transfer Act* has lodged a caveat to prevent the registration of a transfer of the fee-simple by his lessor to a stranger until his lease has been registered, the Court will not adjudicate on conflicting evidence offered by affidavits as to the right of either party to priority of registration, but will, if necessary, extend the caveat so as to enable the caveator to institute a suit to establish his rights, he giving an undertaking as to damages. *In re EDGE*, N.Z.L.R. 1 S.C. 258.

[VICTORIA, ACT OF 1890, s. 145.]—*Procedure—Summons to show cause why caveat should not be renewed.*—*Caveat duly lodged by person entitled to lodge.*—An application by a registered proprietor for the removal of a caveat, on the ground that it would interfere with some intended future dealings with the land, will not be entertained by the Court when it is admitted or shown that the caveat has been lodged in accordance with the Act and by a person entitled to lodge it. In such a case the registered proprietor should not seek to remove the caveat, but should leave it to the caveator to support his claim upon receiving notice that the registered proprietor has applied for the registration of a transfer or other dealing in accordance with the provisions of s. 145. *In re TALBOT AND KELLY*, 13 A.L.T. 270. (Full Court.)

[VICTORIA, ACT OF 1866, s. 117.]—*Procedure—Removal.*—Where it is sought to remove a caveat, the proper course to adopt is to obtain a summons from a judge in Chambers, returnable before the Full Court, calling upon the caveator to show cause why the caveat should not be removed. *Ex parte VINCENT*, 8 A.L.T. 5. (Full Court.)

[VICTORIA, ACT OF 1866, ss. 42, 117.]—*Specific performance—Caveat—Vendor must remove caveat.*—The lodging of a caveat against the registration of a transfer of land under the Act only throws a cloud upon the title of the registered proprietor, and does not amount to such evidence of an absolute want of title as to induce the Court to refuse a purchaser specific performance of a contract of sale on the ground that the vendor has no title. It is the duty of the vendor to have the caveat removed. Even where it has lapsed, and the Registrar is in error in treating it as in existence, the vendor is bound to take the necessary steps to compel the Registrar to register the transfer. *TAYLOR v. LAND MORTGAGE BANK*, 12 V.L.R. 748; 8 A.L.T. 39.

Summons—Signature to.—*See In re WALL, Ex parte PEARSON*, 13 V.L.R. 484, *supra* under this heading.

[N.Z., ACT OF 1885, s. 144.]—*Summons by unregistered transferee for removal of caveat—Locus standi—Summary application—Case for relief.*—The Supreme Court will not entertain a summons to a caveator under s. 144 of *The Land Transfer Act*, 1885, by an unregistered transferee from the registered proprietor. The proper course for the unregistered transferee is to tender his transfer for registration, and to require the Registrar to notify the caveator of the application for registration, fourteen days after which notice the caveat will lapse, unless the caveator obtains an order of the Supreme Court to the contrary under s. 146. The Court will not order a caveat to be removed on a summary application if it is not satisfied that the caveator will not be able to make out a case for relief. *In re STEWART*, 260, *Ex parte PIRIPITI TE MAARI* (No. 2), 11 N.Z.L.R. 745.

[VICTORIA, ACT OF 1866, s. 117.]—*Unregistered transferee—Right of to summon caveator.*—An unregistered transferee of land under *The Transfer of Land Statute* is not a "proprietor" or "applicant" entitled under s. 117 to be notified of a caveat or to summon the caveator. *Ex parte DAVIES AND INMAN*, 11 V.L.R. 780; 7 A.L.T. 99. (Full Court.)

CERTIFICATE.

Of claimant's right to be paid out of Assurance Fund

See REMEDIES FOR DEPRIVATION—Assurance Fund.

Of correctness of instrument for purposes of registration.

See INSTRUMENTS OF TITLE.

Duty of Alienee—Non-investigation of title

See REMEDIES FOR DEPRIVATION.

CERTIFICATE OF TITLE.

See ADVERSE POSSESSION.

See BOUNDARIES.

As evidence of title to right-of-way.

See EASEMENT.

Calling in and cancellation—Registrar's summons.

See REGISTRAR, DUTIES OF.

Caveat against application for rectification of.

See CAVEAT.

Re WALKER, 19 A.L.T. 32.

Detention of.

See DETINUE.

Effect of as to trusts.

See also TRUSTS AND EQUITIES.

Error in.

See also BOUNDARIES.

Forgery of.

See CRIMINAL LAW.

Obtained by fraudulent application.

See FRAUD.

Possession of.

See DETINUE.

See MORTGAGE—Powers of mortgagee.

Production of.

See REGISTRAR, DUTIES OF.

Sale of land described in, by mistake for land described in another certificate of title

See ERROR

ASHLEY v. COOK, 2 A.L.T. 2, 50.

Subject to easement not notified thereon.

See EASEMENT.

LEAN v. MAURICE, 8 S.A.L.R. 119.

CERTIFICATE OF TITLE

A. CANCELLATION AND CORRECTION OF CERTIFICATE OF TITLE ISSUED THROUGH ERROR OR FRAUD.

(1.) Powers of the Registrar.

(2.) Practice of the Court.

B. CONCLUSIVE EFFECT OF CERTIFICATE OF TITLE.

(1.) Cases showing the general rule.

(2.) Exceptions to the general rule.

(a.) Equities.

(b.) Fraud (see also FRAUD).

(c.) Illegality.

(d.) Rights of Holder of Prior Grant or Certificate of Title

(e.) Rights of Occupier.

(3.) Evidence and pleading.

A. CANCELLATION AND CORRECTION OF CERTIFICATE OF TITLE.

(1.) Powers of Registrar.

[VICTORIA, ACT OF 1866, s. 132.]—Cancellation—Error.—In the phrase "certificate of title or other instrument issued in error," "error" includes not a mistake of fact only, but also a mistake of law, and therefore, a certificate of title issued in mistake of law may be required by the Registrar to be delivered up. *In re TRANSFER OF LAND STATUTE, Ex parte BOND*, 6 V.L.R. (L.) 458, 463. (Full Court.)

[N.S.W., ACT OF 1862, s. 126.]—Cancellation—Fraud or error.—The Registrar cannot summon the holder of a certificate of title to deliver it up to be cancelled or corrected under s. 126 unless it has been issued in fraud or error. The certificate of title having been properly issued, the Registrar cannot decide who is entitled to hold it. *In re DE LISSA*, 1 W.N. (N.S.W.) 132.

[VICTORIA, ACT OF 1866, ss. 15, 106, 132.]—Cancellation—Crown lease—Certificate of title for, issued in error—Sale by sheriff—Rights of equitable mortgagee.—M. had leases of two allotments from the Crown. The leases were duly registered under the Act (see s. 15). A. issued a writ of *fi. fa.* against M., and served a copy on the Registrar specifying the allotments as the lands sought to be affected by the writ. Before the expiration of the period allowed by s. 106 for sale by the sheriff and registration of transfer (three months), A. served an *alias* writ of *fi. fa.*, under which the land was sold subsequently to the expiration of three months to P., to whom transfers were executed by the sheriff. Before the date of the sheriff's sale, M. had transferred the land to B., a purchaser for value. B. obtained certificates which he deposited with S. as security for an advance. P. applied to the Registrar to register his transfers. The Registrar refused, but was ordered to register them by the Supreme Court (see, however, *Registrar of Titles v. Paterson*, 2 App. Cas. 110, *infra* SALES BY SHERIFF.) The Registrar now sought to compel S. to give up the certificates of title under s. 132. *Held*, that in the absence of proof of fraud S. was entitled to retain the certificates until his advance was paid off. *In re TRANSFER OF LAND STATUTE, Ex parte PATERSON*, 4 A.J.R. 110.

[VICTORIA, ACT OF 1866, ss. 132, 135.]—Compelling Registrar to give reasons—Instrument alleged to be wrongfully retained—Refusal of Registrar to require its delivery for cancellation—Summons to Registrar.—Under s. 132 the Registrar has a discretion in determining whether it has appeared to his satisfaction that a certificate of title should be called in as issued in error,

with which discretion the Court will not interfere by compelling him to state his grounds. *Ex parte MUTUAL TRUST AND INVESTMENT SOCIETY*, 11 V.L.R. 166; 6 A.L.T. 85.

[N.Z., ACT OF 1885, ss. 69, 191, *et seq.*]—Compelling Registrar to proceed.—A Registrar cannot be compelled, under ss. 191 *et seq.* of the Act of 1885 (which provide for summoning him to substantiate and uphold the grounds of his refusal to perform an act or duty), to proceed under s. 69 of the Act to require the surrender for cancellation of an instrument obtained through fraud or error. *PARAONE v. MATTHEWS*, 6 N.Z.L.R. 744.

[N.S.W., ACT OF 1862, ss. 33, 126.]—Correction—Possessory title—Ejectment—Injunction.—In 1883 S. became the proprietor of a piece of land described in his certificate of title as bounded on the N.E. by the Field of Mars Common. In 1885, a fresh survey having been made, it was discovered that a strip of land intervened between the common and S.'s land. Subsequently S. applied for, and obtained, a fresh certificate of title, bringing his boundary up to the boundary of the common. S. having brought ejectment against the plaintiffs, who were in possession of the strip of land now included in his certificate of title, but formerly part of the common, the plaintiffs brought this suit to restrain the action of ejectment; they also claimed a declaration that they were entitled to the land in dispute, and prayed for an order on the defendant to deliver up his amended certificate to be cancelled. *Held*, by the C.J. in Equity, that the Registrar had no power to alter the boundaries of the defendant's land in the manner adopted; that the amended certificate of title, so far as it included the strip of land claimed by the plaintiffs was void; and that the plaintiffs were entitled to the injunction prayed for, with costs. But, *Held*, on appeal to the Full Court (*per* Darley C.J., and Innes J.), that the error of the Registrar in issuing the amended certificate of title afforded no title to relief in Equity. The plaintiffs, having a good defence to the action-at-law if they could prove their possessory title, the suit was unnecessary, and should be dismissed, with costs. *Per* Foster J.: Section 126 of *The Real Property Act* does not apply to any case where it is sought by rectification of boundaries to bring within the certificate of title any land which has not already been brought under the Act. *ROURKE v. SCHWEIKERT*, 9 N.S.W.L.R. (Eq.) 152.

[N.S.W., ACT OF 1862, ss. 122, 126.]—Limitation—Application by Registrar to Court.—Section 122 of *The Real Property Act* does not operate to prevent the Registrar from applying to the Court for an order directing the holder of a certificate of title to deliver it up for the purpose of amending it after the lapse of six years. *In re GRAHAM*, 3 W.N. (N.S.W.).

[VICTORIA, ACT OF 1866, ss. 132, 135.]—Refusal of Registrar—Mandamus.—Where the Registrar has refused to call in a certificate of title under the powers given him by s. 132, the Court will not order him to do so under s. 135, unless the certificate of title is proved to have been issued in error or through fraud, or to contain a misdescription of the land. *In re O'CONNELL*, 6 A.L.T. 85.

(2.) Practice of the Court.

[N.S.W., ACT OF 1862, ss. 126, 127.]—Evidence—Summons to show cause.—On a summons by the Registrar under s. 126 of *The Real Property Act* for an order for the cancellation of a certificate of title, cause may be shown by the holder of the certificate of title against the application on affidavit. *In re BECKETT* 15 N.S.W.L.R. (L.) 94. (Full Court.)

[VICTORIA, ACT OF 1866.]—Fraud—Proceedings in Equity—Plaintiff, in proceedings in Equity, prayed for correction of certificate of title obtained by fraud, and for general relief. The Court made a decree ordering defendant to transfer to and vest in plaintiff the land included in the certificate of title. *CAMPBELL v. JARRETT*, 7 V.L.R. (Eq.) 137, 3 A.L.T. 49; cf. *GUNN v. HARVEY*, 1 V.L.R. (Eq.) 111.

[S.A., ACT OF 1858; ACT OF 1861.]—Mortgage—District Councils Act, 1858—Order for sale under—Equity—Invalid Transfer.—On October 20th, 1858, a certificate of title under *The Real Property Act*, 1858, was issued to L. in respect of allotment 9, which allotment, with other property, was subsequently mortgaged, and continued subject to such mortgage until after the institution of the present suit. On October 17th, 1873, an order for sale of the allotment was obtained by virtue of s. 186 of *The District Councils Act*, 1858, and the land was accordingly sold; and on 20th April, 1874, conveyed by the Master to the plaintiff, N. In October, 1874, L. wrote to R. (his son-in-law) suggesting that he should purchase the land for £10, which R. accordingly did without making any inquiries, and the land was thereupon transferred by L. to R. by a memorandum of transfer duly registered. On bill filed by N., praying that the certificate of title should be delivered up and cancelled: *Held* (1) That the conveyance made pursuant to the order was valid, and vested the fee-simple of the land in N., and that by reason of such sale and conveyance the allotment was out of the provisions of *The Real Property Act*, 1861; (2) that N. was nevertheless entitled to have the certificate of title delivered up and cancelled on the ground that the existence of the same and the transactions of L. and R. in connection therewith tended to throw a cloud or suspicion on the validity of his title to the property. *NEILL v. LINDSAY*, 13 S.A.L.R. 196.

[N.Z., ACT OF 1870, s. 140.]—Summary remedy—When applicable.—The Court has no jurisdiction under the Act of 1870, s. 140, to make an order on summons for the cancellation of an instrument registered under the Act, on the ground that it had been obtained and registered in fraud of a person having an equitable title. The person injured in such a case must proceed by an equity suit. He can also protect himself by caveat. The section was only intended to provide a speedy remedy in amending errors or mistakes of officers of the department, and for cancelling instruments obtained from them or entries made by them through fraud. *In re BENJAMIN*, 2 N.Z.J.R.N.S.S.C. 163.

[S.A., ACT OF 1861, s. 137.]—Summary remedy—Petition—Jurisdiction.—The Court has no jurisdiction under *The Real Property Act*, 1861, s. 137, to cancel a certificate of title on the

petition of a person claiming to be entitled to the land comprised in it until the title of such claimant has been established by proceedings at law. *In re BIGGS*, 11 S.A.L.R. 43.

[S.A., AMENDING ACT OF 1878, s. 48.]—**Summary remedy—Powers of Supreme Court to direct cancellation of certificate or entry—Originating summons—Proceedings at law or in equity.**—The powers of the Supreme Court or judge to cancel, correct, substitute, or issue any certificate of title, or any memorial or entry in the register book as provided by s. 48 of *The Real Property Act Amendment Act* will only be exercised to give effect to the judgment, decree, or order of such court or judge in a proceeding at law or in equity wherein the rights of the person asking for the exercise of those powers have been judicially determined. *Semble*, an application by way of originating summons to a judge in chambers for the cancellation of a certain entry in the Registry Book, (such application being opposed, and the rights of the applicant disputed) is not a proceeding within s. 48. *In re WHITE*, 21 S.A.L.R. 6.

Parties—Land brought under Act by fraud of defendant—Certificate of title issued to him—Registrar not made a party to the action—Cancellation of certificate of title refused.—See *BRADY v. BRADY*, 8 S.A.L.R. 219; *OGLE v. AEDY*, 13 V.L.R. 461.

B. CONCLUSIVE EFFECT OF CERTIFICATE OF TITLE.

(1). Cases showing the general rule.

[Q., ACT OF 1861, ss. 33, 34, 96.]—**Conclusive effect.**—See the judgment of Full Court, quoting *BAILEY v. CRIBB post*; *PHILLIPS v. M'LACHLAN post*; in *QUEENSLAND INVESTMENT AND LAND MORTGAGE CO. LTD. v. GRIMLEY*, 4 Q.L.J. Supp. 10.

[Q., ACT OF 1861, s. 44.]—**Conclusive effect.**—The purpose of the Act is to give persons dealing with the registered owner under its terms and safeguards, as far as it can, an indefeasible title by registration. Dealing with the registered proprietor in pursuance of the Act, and in the absence of fraud or of any impediments expressly created by the Act itself, the title is safe. *Re WILDASH and HUTCHISON, Ex parte MISKIN*, 1 Q.L.R. (Pt. II.) 49, 50.

[S.A., ACT OF 1861.]—**Bankruptcy of registered proprietor—Action of ejectment against him by trustee—Plea of registration as proprietor.**—Ejectment cannot be maintained against a registered proprietor under *The Real Property Act*, and will not therefore lie by assignees in insolvency or trustees under Division VI. of *The Insolvency Act*, 1860, against the insolvent or debtor until such assignees or trustees are registered proprietors. *KELLY v. DOODY*, 5 S.A.L.R. 132.

[N.S.W.]—**Bankruptcy Act—Endorsement on title after voluntary transfer—Registrar.**—In the case of a voluntary settlement the Registrar is not entitled to make a notification on the certificate of title that the transfer is made subject to the provisions of s. 55 of the *The Bankruptcy Act*. *Ex parte CAMERON*, 15 N.S.W.L.R. (L.) 139; and see *CROW v. CAMPBELL*, 10 V.L.R. (Eq.) 186. (Full Court.)

[N.Z., ACT OF 1885.]—**Caveat by Registrar.**—Where a certificate of title has been issued to an applicant proprietor, the fact of the pendency of an action which may result in a claim on the Assurance Fund does not justify the District Land Registrar in lodging a caveat to prohibit dealings with the land. Where no fraud, concealment, or misdescription is suggested, it is not open to the Crown or its officers to call the title in question, or restrain the transfer of the land. *In re TANNER*, N.Z.L.R. 5 S.C. 102.

[N.S.W., ACT OF 1862, ss. 33, 34, 47; ACT OF 1873, s. 1.]—**Ejectment—Plaintiff holder of certificate of title—Certificate of title conclusive evidence.**—In the year 1869 G. conditionally purchased the land in question; in March, 1872, G. transferred to defendant by notification to the land agent of the district; in September, 1872, a Crown grant was issued to G., and in 1880 the Sheriff sold under a *fi. fa.* all G.'s right, title and interest to P., who obtained a certificate of title. In 1881 P. sold to W., to whom a fresh certificate was issued. Later in the same year W. sold to plaintiff by memorandum of transfer endorsed on W.'s certificate of title. No fresh certificate of title was issued to plaintiff. *Held*, that plaintiff was entitled to succeed in an action of ejectment. Section 33 of *The Real Property Act* of 1862 applies to cases where a grant from the Crown has been issued subsequently to the passing of the Act, and makes a certificate of title conclusive evidence of the things stated in it. The plaintiff, by virtue of s. 1 of the Amending Act of 1873, has the same rights as if a fresh certificate of title had been issued to him. And the endorsement of the memorandum of transfer on W.'s certificate of title is, by virtue of s. 34 of *The Real Property Act*, evidence of the registration of the transfer from W. to the plaintiff. *Semble*, that by s. 47 of *The Real Property Act* all the rights of W. were, by the execution of the memorandum of transfer, conferred on the plaintiff. *PHILLIPS v. M'LACHLAN*, 5 N.S.W.L.R. (C.L.) 168.

[N.S.W. ACTS OF 1862 AND 1878.]—**Error—Right of Crown to allege mistake.**—In an issue under *The Real Property Act*, it is not competent for the Crown to set up a mistake in the clear and reasonable language of the grant. *Ex parte BANK OF AUSTRALASIA (ATTORNEY-GENERAL CAVEATOR)* 15 N.S.W.L.R. (L.) 256. (Full Court.)

[N.Z., ACT OF 1885, s. 66.]—**Forged conveyance—Land subsequently brought under the Act.**—Where a signature to a deed of conveyance is, without the knowledge of the purchaser, a forgery, and the land conveyed thereby is brought under *The Land Transfer Act*, the purchaser's title to the land is unimpeachable. *COLEMAN AND CLARKE v. RIRIA TUWHANGA*, N.Z.L.R. 4 S.C. 230.

Q., ACT OF 1861, ss. 123, 126.]—**Forged transfer—Bonâ fide purchaser without notice.**—Under *The Real Property Act* of 1861 a purchaser from a proprietor registered on a forged transfer, for valuable consideration without notice, on registration obtains the legal estate. *BAILEY v. CRIBB*, 2 Q.L.J. 43.

[VICTORIA, ACT OF 1866, ss. 34, 47, 48.]—**Forged Transfer.**—A registered proprietor under the statute, being a purchaser for value and without notice of the forgery, acquires, by virtue of the Act, an indefeasible title to the estate or

interest of which he is registered, even although such registration may have been effected by means of a forged instrument. *O'CONNOR v. O'CONNOR*, 9 A.L.T. 117.

[Q., Act of 1861].—*Fraud—Burden of Proof.*—In an action by the registered proprietor for recovery of possession of certain land the defendant alleged fraud. The plaintiff produced the certificate of title free from encumbrance. *Held*, that the onus of proving fraud lay on the defendant, and unless fraud was proved the plaintiff was entitled to possession against all the world. *LENNEBERG v. SCHLEUSENER*, B.C.R., 24th August, 1885.

[VICTORIA, Act of 1866, ss. 47, 49].—*Illegality—Selection of land by a "dummy."*—It was alleged that M. selected land as a "dummy" for H., and after obtaining the Crown grant transferred it to H. under the Act, and H. obtained a certificate of title. *Held*, per Molesworth J., that the Court would not assist either party to a transaction which was contrary to the policy of the Land Act. *M'CAHILL v. HENTY*, 4 V.L.R. (Eq.) 68, 73.

[N.Z., Act of 1870, s. 129, Act of 1885, s. 66].—*Irregularity and Invalidity of Proceedings prior to bringing land under the Act—Absence of fraud or notice of fraud.*—Section 129 of the Act of 1870, and the corresponding section in the Act of 1885, are absolute except in the cases expressly mentioned. Therefore, where a company had obtained a certificate of title without any fraud or notice of fraud, its title was held to be indefeasible, notwithstanding irregular or even invalid proceedings in the Native Land Court prior to bringing the land under the Act through which the company claimed title, but to which it was not a party, and of the invalidity of which it was not aware. *MATAI v. ASSETS COMPANY*, 6 N.Z.L.R. 350.

[Q., Act of 1861, s. 44].—*Occupation.*—Where a person is registered as proprietor of land under the Real Property Acts, a person in occupation cannot, in the absence of fraud, dispute the title of the registered proprietor. *BUTLER v. KENNEDY*, B.C.R., 4th April, 1892.

[N.S.W., Act of 1862, ss. 40, 107].—*Reservation of public rights.*—The Registrar-General, having, under *The Real Property Act* of 1862, issued a certificate of title with a clause endorsed thereon reserving, or purporting to reserve, "any lawful rights incident to the alignment of streets or roads abutting on the land," the Court (Stephen C.J., *diss.*), directed the Registrar-General to cancel such certificate, and to issue a new one in the same terms, but without such a clause. *Ex parte SMART*, 6 S.C.R. (N.S.W.) 188. (Full Court.)

[VICTORIA, Act of 1866, ss. 47, 49].—*"Reservations and Exceptions."*—As regards the question of *parcels*, the certificate of title is conclusive, and is not affected by the "reservations and exceptions" to the paramount title of a registered proprietor under s. 49 of *The Transfer of Land Statute*. *ALMA CONSOLS G.M. Co. v. ALMA EXTENDED Co.*, 4 A.J.R. 190. (Full Court). *See vide SMALL v. GLEN*, 6 V.L.R. (L.) 154; 1 A.L.T. 197.

(2) *Exceptions to the general rule.*

(a) *Equities.*

[N.S.W., Act of 1862, s. 40].—*Equities.*—The provisions of s. 40 of *The Real Property Act* giving an indefeasible title are not to be construed

as if meaning that by registration alone under the Act a duly registered proprietor is enabled to get rid of equities residing in himself in relation to such property. *SEMPILL v. JARVIS*, 6 S.C.R. (N.S.W.) (Eq.) 68.

[N.S.W., Act of 1862, ss. 33, 40].—*Equities—Certificate of title not paramount to a personal equity.*—In 1870 E.H. conditionally purchased from the Crown 60 acres of land in the name of his son, P.H. (the plaintiff), then an infant six years old. In 1875 the selection, with several others, was sold to the defendant, the notification of transfer being signed by the plaintiff, then 11 years old. Afterwards, and before the plaintiff came of age, the defendant obtained the Crown grant and a certificate of title under *The Real Property Act*. The plaintiff, on coming of age, repudiated the transfer. *Held*, that the plaintiff had a personal equity against the defendant, and that he had a right to call upon him for a transfer, and that there was no resulting trust to the father. *Held, also*, that the fact of the defendant having obtained the certificate of title was no bar to the plaintiff's right to establish his equity. *SEMPILL v. JARVIS*, 6 S.C.R. (N.S.W.) (Eq.) 68 followed. *HALL v. LODER*, 7 N.S.W. L.R. (Eq.) 44.

[N.Z., Act of 1870].—*Equities.*—A certificate of title under the Act does not, as between the immediate parties to a contract, alter the rights against and liabilities to each other. There is nothing in *The Land Transfer Act* which, as between the trustee and *cestui que trust*, puts an end to the trust; and the *cestui que trust* may always enforce his rights against the trustee, though the trustee may have acquired a certificate of title. *PAORO TOROTORO v. SUTTON*, 1 N.Z.J.R. N.S.S.C. 57.

(b) *Fraud. (See also FRAUD).*

[S.A., Act of 1861].—*Fraud in bringing land under Act—Cancellation—Parties.*—M., the eldest son of a deceased owner, fraudulently applied in the name of his father to have certain lands brought under *The Real Property Act*, stating in his declaration in support, amongst other things, that he was not aware of any mortgage other than set forth, and stated as follows: "That K. lent to me the sum of £250 on the security of the said piece of land and that I have agreed to execute and register a mortgage for the said sum to the said K., or to whom he may desire." A certificate of title was accordingly issued in the name of the deceased owner, and on the date when the same was issued, M. executed a memorandum of mortgage to Der Deutsche Club to secure the sum of £250 and interest, presumably the same sum expressed in the application to have been advanced by K. On bill filed to set aside the certificate of title and mortgage: *Held*, that the Lands Titles Commissioners had no power under the circumstances to issue the certificate of title in the name of a dead man; that such certificate of title was therefore a nullity, and the mortgage being based on the certificate of title fell with it; that neither the heir-at-law of the testator, the executors of his will, the Registrar-General, nor the commissioners were necessary parties to the suit; and that the court of equity has concurrent if not sole jurisdiction in cases of fraud arising under *The Real Property Act*. *BRADY v. BRADY*, 8 S.A.L.R. 219.

[VICTORIA, ACT OF 1866, ss. 49, 50.]—Fraud in acquiring certificate—*Adverse possession*—*Tenant—Mortgagor and mortgagee—Constructive notice*.—The word “fraud” in ss. 49 and 50 of *The Transfer of Land Statute*, does not include fraud of the conveying party in acquiring title. [CHOMLEY v. FIREBRACE, 5 V.L.R. (Eq.) 67, distinguished.] *Semble*, the protection afforded by s. 49 of *The Transfer of Land Statute* to a tenant, does not extend to protect the title of the landlord. A., a registered proprietor of land under *The Transfer of Land Statute*, borrowed money from B., and was induced by him to sign a document which he supposed to be a security, but which was a transfer by him to B. of the land. B. had himself registered as proprietor, and mortgaged the premises to C. The premises were throughout in the occupation of a weekly tenant of A., who paid rent to him. Upon the discovery of B.’s fraud, A. filed his bill against B. and C. for redemption. *Held*, that but for *The Transfer of Land Statute*, s. 50, C. would, by the tenancy, have been affected with constructive notice of A.’s rights, but that that section protected him, and that the mortgage to C. was good as against A.; and decree for redemption made upon payment by A. or B., and if by A., then B. ordered to repay him. CULLEN v. THOMPSON, 5 V.L.R. (Eq.) 147. (Full Court.)

[VICTORIA, ACT OF 1866, ss. 49, 50.]—Fraud—27 Eliz. c. 4—*Certificate of title held by volunteer—Subsequent purchaser—Specific performance*.—W. was the owner of land and brought it under the Act, the certificate of title being issued in the name of his son. Some months afterwards he made an agreement to sell the land to plaintiff. Plaintiff thereupon brought a suit for specific performance and to have the certificate of title declared void as against plaintiff. *Held*, that plaintiff was entitled to succeed, the son’s title not being paramount, the protection afforded by ss. 49 and 50 of the Act being intended for real purchasers and persons dealing with them, and not to sons taking presents from their fathers. COLECHIN v. WADE, 3 V.L.R. (Eq.) 266.

[VICTORIA, ACT OF 1866.]—Fraud—*Forged transfer—Rights of purchasers and mortgagees*.—*The Transfer of Land Statute* protects those who derive a registered title *bonâ fide* and for value from a registered proprietor. Accordingly they need not investigate the title of such owner, for they are not affected by its infirmities. But they must ascertain at their own peril his existence and identity, the authority of any agent to act for him, and the validity of the deed under which they claim. A registered owner’s name was removed from the register in favour of a fictitious and non-existing transferee by means of a forged transfer, and a mortgage purporting to have been executed by the fictitious transferee was subsequently registered by *bonâ fide* mortgagees. *Held*, that the mortgage was invalid, and did not operate as an incumbrance on the title of the true owner in favour of the mortgagees, and that the true owner was entitled to be restored to the register. GIBBS v. MESSER, 1891 A.C. 248.

(c) *Illegality.*

[VICTORIA, ACT OF 1866, ss. 15, 47.]—Mining Lease from Crown—*Certificate of title for—Lease voidable*.—Where a Crown lease is voidable by declaration of the Governor-in-Council, it cannot be held after such declaration by

reason of the lessee being registered as proprietor of the lease. MATT v. PEEL, 2 V.R. (M.) 27; 2 A.J.R. 138.

(d) *Rights of holder of prior grant or certificate of title.*

[TAS., ACT OF 1862, s. 135.]—Prior grant—*Errors in—Certificate void pro tanto—Title from Crown Grant—Condition unperformed*.—After the sale of land by S. to H. it was discovered that part of the property sought to be conveyed by S. (although included in his grant under *The Real Property Act*) was comprised in a subsequent certificate of title to D. *Held*, that s. 135 applied, and rendered D.’s certificate void against S. as regards the overlapping piece, and S. had a marketable title thereto. By the conditions of sale S. was to deliver the abstract, deducing his title from the Crown grant. Inasmuch as here his title would depend not only on his grant but on evidence that he had been in prior possession when D. got his certificate: *Held*, that H. was not bound to accept, as the condition had not been complied with. SHARPE v. HADLEY, 6th December, 1883. Tas. Dig. col. 107.

[VICTORIA, ACT OF 1866, ss. 47, 49.]—Prior certificate.—Where the certificate of title issued to the plaintiff comprised the land in dispute, and the certificate of title issued to the defendant also comprised the land in dispute, the certificate which was issued prior in point of date will be conclusive evidence as to the ownership of the land in dispute. LLOYD v. MAYFIELD, 7 A.L.T. 48. (Full Court.)

[VICTORIA, ACT OF 1866, ss. 47, 49, 106.]—Sheriff’s sale—*Wrong land*.—As to effect of sheriff’s sale, by mistake, of land not belonging to the defendant: *See SALES BY SHERIFF*. HASSETT v. COLONIAL BANK, 7 V.L.R. (L.) 380.

(e) *Rights of occupier.*

[VICTORIA, ACT OF 1866, ss. 47, 49.]—Mining lease—“*Right or interest of any tenant*.”—An occupation license of certain lands was granted under s. 42 of *The Lands Act* to D., and subsequently a mining lease of the same lands was granted to plaintiffs, subject to the occupation license, which lease was registered under *The Transfer of Land Statute*. D. afterwards obtained a grant of the fee-simple of the land, and leased the same to the defendants. *Held*, that the plaintiffs did not interfere with any “right or interest” of D. or defendants, and an injunction was granted to restrain the defendants from mining on the lands claimed by the plaintiffs. The object of the proviso in s. 49 is to prevent the severance of the relation of landlord and tenant. If a tenant brings his leasehold under the Act, he is not to get rid of the reservations (of rent), the exceptions (of timber, &c.), the condition (of re-entry), or the power (to enter and view, &c.); but as regards the parcels of a lease a certificate is inconvertible. ALMA CONSOLS GOLD-MINING Co. v. ALMA EXTENDED Co., 4 A.J.R., 190. (Full Court.)

[VICTORIA.]—Mining lease—*Trespass—Miner—Miner’s right*.—The plaintiff, the holder of a mining lease, obtained a certificate of title under *The Transfer of Land Statute*, and, having succeeded in an action for ejectment against the defendant, he brought an action to recover as mesne profits gold obtained after ejectment, and pro-

duced the mining lease to show what the certificate of title referred to. *Held*, that the plaintiff's title under such lease might be impeached; that the lease did not pass the mine; and that a holder of a miner's right is not a "tenant" within the meaning of s. 49. *MUNRO v. SUTHERLAND*, 5 A.J.R. 139. (Full Court.)

[VICTORIA, ACT OF 1866, s. 49.]—*Reservations—Ejectment—Splitting case—Mining Statute*, 1865, No. 291, s. 24.—J.E. had issued to him by mistake a mining lease which had been applied for by another person of the same name. When the mistake had been discovered by the department the lease was cancelled and another issued to the right person while the defendant was still in occupation, and he transferred to the plaintiff, who registered under *The Transfer of Land Statute* and obtained a certificate of title. The plaintiff put in the certificate of title and rested his case upon it, and gave evidence in rebuttal of defendant's case. *Held*, that the plaintiff's case was not subject to the defendant's occupation within the reservation of s. 24 of No. 291; that such possession was not a reservation within the proviso of s. 49; that the plaintiff had not split his case by relying on his certificate of title, and afterwards bringing evidence to rebut the defendant's case. *MUNRO v. SUTHERLAND*, 4 A.J.R. 167. (Full Court.)

[S.A., ACT OF 1861.]—*Unregistered lease*.—A holder of a certificate of title holds it absolutely free from all encumbrances not notified thereon, and is therefore not bound by any demise not so notified. *MANNING v. CROSSMAN*, 5 S.A.L.R. 130. (Full Court.)

[S.A., ACT OF 1861.]—*Unregistered lease—Lease for less than three years*.—In an action of ejectment by a registered proprietor of land under *The Real Property Act*, the defendant relied on an outstanding lease for two years granted by the plaintiff; but any lease for three years being incapable of registration under the Act, the lease was not notified on the register. *Held* (following *MANNING v. CROSSMAN*, 5 S.A.L.R., 130 *ante*), that the plaintiff held the land free from all encumbrances not notified on the register, and could maintain ejectment. *BUCKETT v. KNOBBE*, 7 S.A.L.R. 147.

[S.A., ACT OF 1861.]—*Unregistered lease—Ejectment—Tenancy from year to year*.—In ejectment by the registered proprietor of land under *The Real Property Act*, the defendant set up that he had entered into possession by virtue of a verbal agreement for a lease for ten years from the former registered proprietor and that by virtue of such agreement he became tenant from year to year, and was entitled to six months' notice, expiring at the time of year when his tenancy began. *Held* (following *MANNING v. CROSSMAN*, 5 S.A.L.R., 130), that the defendant showed no estate or interest in the land valid against the unencumbered certificate of title of the registered proprietor. *TRANTER v. LORD*, 8 S.A.L.R. 81. (Full Court.)

[S.A., ACT OF 1861.]—*Unregistered lease—Tenant in possession—Landlord obtaining clean certificate of title—New tenancy necessary*.—A tenant in possession under an agreement with a person who subsequently obtains a clean certificate of title of the land in respect of which such agreement is made, becomes a trespasser as against such person until a fresh tenancy is

created by possession and payment of rent. *HUNTER v. PLAYER*, 9 S.A.L.R. 100. (Full Court.)

[S.A., ACT OF 1861.]—*Unregistered lease—Ejectment—Tenancy from year to year—Entry and payment of rent*.—The plaintiff held a certificate of title of a section of land. The defendant took possession of a portion of the section and held it for about two years and a half, when the plaintiff brought an action of ejectment against him. The defendant set up a *jus tertii*, alleging that one H. was entitled to possession as tenant to the plaintiff. It appeared that H., under an unregistered lease from the plaintiff, which was cancelled by agreement between the parties before action brought, had entered into possession of the section, but not of the portion occupied by the defendant, and had paid rent to the plaintiff. *Held*, that as H. had never entered upon the land occupied by the defendant, the entry upon the rest of the land and the payment of rent did not make him tenant from year to year of the land in the defendant's possession, and hence the *jus tertii* was not established. *JOY v. DUNLOP*, 16 S.A.L.R. 131. (Full Court.)

[N.Z., ACT OF 1885.]—*Unregistered lease—Term not exceeding three years—Semble*, that legal tenancies for terms not exceeding three years not being registrable can be created without registration under the Land Transfer system. *FINNORAN v. WEIR*, N.Z.L.R. 5 S.C. 280.

[VICTORIA, ACT OF 1866, s. 49.]—*Unregistered lease—Tenant at will—Ejectment*.—When R. had entered into possession of land, under a contract made with a person from whom those seeking to eject him themselves derived title: *Held*, that before they could maintain ejectment R. was entitled to a demand of possession. A tenancy at will is "an interest" within s. 49 of *The Transfer of Land Statute*. *COLONIAL BANK v. ROACHE*, 1 V.R. (L.) 165.

[VICTORIA, ACT OF 1866, s. 49.]—*Unregistered lease—Action of ejectment—Effect of certificate of title on rights of existing tenants*.—S. brought an action of ejectment against D., relying upon a certificate of title issued to him in pursuance of decree in an action brought by S. against A. A., while in occupation after the decree, but before issue of certificate of title to A., granted a lease which defendant held. *Held*, under s. 49 of *The Transfer of Land Statute*, S.'s title was subject to the lease to D. *SLACK v. DOWNTON*, 1 A.L.T. 2. (Full Court.)

[VICTORIA, ACT OF 1866, s. 49.]—*Unregistered lease—Adverse possession—Subsequent registered mortgage*.—A registered proprietor made a lease to the defendant which was never registered; shortly afterwards he executed a mortgage in favour of plaintiff, which was duly registered. Possession was not demanded from the defendant, but he was asked to attorn tenant to plaintiff, which he refused to do. In an action of ejectment, *Held*, that defendant's possession as tenant of the mortgage was not adverse to plaintiff's title, and his right to possession was preserved as being that of a tenant under s. 49. *COLONIAL BANK v. RABBAGE*, 5 V.L.R. (L.) 462. (Full Court.)

[VICTORIA, ACT OF 1866.]—*Unregistered lease—Tenancy at will—How set up as defence*.—If, in an action of ejectment, the plaintiff relies on certificates of title, which he produces, and

the defendant sets up as a defence a tenancy at will and absence of any demand of possession, he must show distinctly that such tenancy at will has been created. *STEWART v. BOLTON*, 8 V.L.R. 305, 4 A.L.T. 79. (Full Court.)

[VICTORIA, ACT OF 1866, s. 49].—Unregistered lease—Meaning of the words "tenant," "interest of any tenant."—The word "tenant" in *The Transfer of Land Statute*, s. 49, must be deemed to include every tenant who is in actual occupation and holds under some landlord. The words "interest of any tenant" in the same section imply that every interest in the land of such a tenant which grows out of and is not dis-severable from his right to continue in occupation as a tenant, is protected by the terms of this section against the claim of a proprietor under a certificate of title. The defendant was let into or allowed to remain in possession of land under a contract for the sale of the land to him by the vendor. The vendor at the same time transferred the land to the plaintiff society. *Held*, in an action of ejectment, the defendant being in possession of the land as tenant, that this, together with the contract of sale, constituted an interest to which the land was subject under s. 49 of *The Transfer of Land Statute*, and that this claim must prevail against the claim of a proprietor transferee of the certificate of title of the land, and that such transferee could not succeed in an action of ejectment. It is not to be recognised as a principle of law that mere negligence can deprive a tenant of his statutory rights under s. 49 of *The Transfer of Land Statute*. *SANDHURST MUTUAL PERMANENT INVESTMENT BUILDING SOCIETY v. GISSING*, 15 V.L.R. 329. (Full Court.)

[VICTORIA, ACT OF 1890, s. 74].—Unregistered lease—*Statute of Frauds*, s. 4—Action for recovery of land—Parol agreement—Part performance—Adverse possession—"Tenant of land"—Tenancy for life—Registered proprietor.—The word "tenant" in the Act of 1890, s. 74, includes a tenant for life. A. was the registered proprietor of an allotment of land under the operation of *The Transfer of Land Statute*. In April, 1879, it was agreed between A. and the defendant (his wife) that in consideration of her withdrawing certain legal proceedings which she had taken against him by reason of his desertion he would assign the allotment to her for life. She withdrew the proceedings, and he gave up possession to her, and she continued in exclusive possession thereafter. No agreement signed by A. was in evidence, but a document was produced sent by him for his wife's signature, and apparently a counterpart of one which he had signed or intended to sign himself assigning the allotment to her for life. In July, 1894, the plaintiffs, who were now the registered proprietors, and claimed under a mortgage from A., brought an action to recover the land from the defendant. *Held* (1) That the defendant's possession must be considered to be under the agreement; that she was tenant for life of the land, and that there had been sufficient part performance to take the case out of the Statute of Frauds; (2) That the title of the plaintiffs as registered owners was subject to that of the defendant, she being a "tenant" of the land within the meaning of *The Transfer of Land Act*, 1890, s. 74. *ROBERTSON v. KEITH*, 1 V.R. (Eq.) 11 (*post*), and *SANDHURST MUTUAL BUILDING*

SOCIETY v. GISSING, 15 V.L.R. 329 (*ante*) followed. *BLACK v. POOLE*, 16 A.L.T. 155.

[VICTORIA, ACT OF 1866, s. 49].—Unregistered purchaser in possession—*Sheriff's sale*—Adverse possession.—The defendant bought at a sheriff's sale the estate and interest of W., registered proprietor of land under *The Transfer of Land Statute*. Part of this land had been previously sold by W. to the plaintiff, who was in possession, and before and at the sale gave the defendant express notice of his interest. The defendant became registered proprietor of the allotment under a transfer by the sheriff, and brought an action of ejectment against the plaintiff. On bill to restrain proceedings in ejectment, and to constitute the plaintiff registered proprietor of the land in his possession: *Held*, that his interest was that of a tenant within the meaning of s. 49 of the statute, and decree made as prayed. Observations made upon the terms "adverse possession" and "fraud" in that section. *ROBERTSON v. KEITH*, 1 V.R. (Eq.) 11.

[VICTORIA, ACT OF 1890, s. 74].—Vendor in possession—Mortgage by purchaser—Vendor in possession until payment of purchase-money—Tenancy.—The purchaser of land obtained a certificate of title thereto, and agreed with the vendor that the balance of the purchase-money should be paid at the end of a year, and that the vendor should remain in possession of the land until such balance was paid, the vendor paying rent, which was to be deducted from the balance of the purchase-money when paid. The purchaser afterwards mortgaged the land by deposit of the certificate of title. In an action by the mortgagees against the vendor to recover possession of the land, *Held*, that until payment of the balance of the purchase-money the vendor was a tenant of the land within the meaning of s. 78 of *The Transfer of Land Act*, 1890, and that to his interest that of the mortgagee was subject. *COMMERCIAL BANK OF AUSTRALIA, LIMITED, v. MCGASKILL*, 18 A.L.T. 175.

(3.) Evidence and Pleading.

[VICTORIA, ACT OF 1866, s. 47].—Evidence of title—Duplicate certificate of title.—The certificate of title which is to be conclusive evidence of title under s. 47 is the certificate of title retained by the Registrar and bound up in the register book; the duplicate certificate of title held by the proprietor is only *prima facie* evidence. *WILKINSON v. BROWN*, 1 V.R. (L.) 86; 1 A.J.R. 88.

[VICTORIA, ACT OF 1866, ss. 47, *et seq.*].—Evidence of title—Action for ejectment.—Although the certificate of title is conclusive evidence of title, if the registered proprietor nevertheless chooses to go behind it and produce evidence showing that he was not entitled to be registered, he will be non-suited in an action for ejectment. *MILLER v. MORESEY*, 2 V.R. (L.) 39. But in a subsequent trial, where plaintiff relied on certificate of title alone, *Held*, that he could not be non-suited. *MILLER v. MORESEY*, 2 V.R. (L.) 193, 2 A.J.R. 115.

[VICTORIA, ACT OF 1866].—Evidence—Conclusiveness of certificate of title not produced—*Mining Statute*, 1865 (*No.* 291) ss. 13, 24—Where a mining lessee has obtained a certificate of title under *The Transfer of Land Statute*, he must produce it in a suit in which he would rely upon it as conclusive.

SHAMROCK COMPANY v. FARNSWORTH, 2 V.L.R. (Eq.) 165.

[VICTORIA, ACT OF 1866, ss. 47 *et seq.*]—*Evidence—Action for ejectment—Proof of defendant's possession.*—In an action for ejectment in which the defendant appeared and the plaintiff produced a certificate of title as evidence of his title; *Held*, that he need not prove possession by defendant. *VALLANCE v. CONDON*, 3 V.L.R. (L.) 83. (Full Court.)

[VICTORIA, ACT OF 1866.]—*Plea—Vendor and purchaser—Contract to give possession—Breach of contract—Plea that plaintiff registered proprietor.*—Defendant sold land to plaintiff, and agreed to give him possession on a day named. The land was transferred, and plaintiff obtained a certificate of title in his own name. On an action for breach of contract, defendant pleaded that before breach plaintiff obtained a certificate of title. *Held*, on demurrer, that the plea was bad. *PHENIX FOUNDRY Co., LTD. v. HUNT*, 5 A.J.R. 70, 144. (Full Court.)

CESTUI QUE TRUST.

See TRUSTS AND EQUITIES.

Caveat by

See CAVEAT AGAINST DEALINGS.

CHARGE.

Lands subject to

See BRINGING LAND UNDER ACT.

AIKENHEAD v. RECORDER OF TITLES.
30th April, 1890, Tas. Dig. col. 106.

CHARGING ORDER.

[N.Z., ACT OF 1885.]—*Priority—Unregistered transfer—Equities.*—A charging order only binds lands subject to equities subsisting at the date of its making, and will therefore be removed to enable the registration of a transfer which was executed prior to the making of the charging order. *In re MUTUAL BENEFIT BUILDING AND INVESTMENT SOCIETY, Ex parte BAYNES*, N.Z.L.R. 5 S.C. 293.

[N.Z., ACT OF 1885.]—*Priority—Unregistered transfer.*—The registration of a charging order gives no priority over an unregistered transferee in good faith whose transfer was made before the issue of the charging order. *In re BEATTIE*, N.Z. L.R. 5 S.C. 342.

COMMISSIONER FOR STAMPS.

Caveat by

See CAVEAT AGAINST DEALINGS.

COMMISSIONER OF TITLES.

Duties of, as to making order for foreclosure

See MORTGAGE—Foreclosure.

Jurisdiction of, to make vesting order

See PRACTICE.

COMPANY.

Mortgage by, whether ultra vires

See REGISTRAR, DUTIES OF.

Re KAIHU VALLEY RAILWAY Co. AND OWEN, 8 N.Z.L.R. 522.

COMPANY.

Transfer to foreign company

See REGISTRAR, DUTIES OF

[N.S.W.]—*Bringing land under Act.*—A company applying to bring land under the Act is not a "plaintiff" within the meaning of s. 99 of the (N.S.W.) Companies Act, and therefore cannot be made to give security for costs although in liquidation. *Re ANGLO-AUSTRALIAN I. F. AND L. Co. LTD.*, 9 W.N. (N.S.W.) 128. (Full Court.)

CONDITION.

Against alienation

See CROWN GRANT.

See LEASE.

CONDITIONAL PURCHASE.

Under Crown Lands Acts

See CROWN GRANT.

Transfer of, by infant

See TRUSTS AND EQUITIES.

HALL v. LODER, 7 N.S.W.L.R. (Eq.) 44.

CONSIDERATION.

Of mortgage

See EVIDENCE.

True consideration of transfer

See TRANSFER.

CONSOLIDATION.

Of mortgages

See MORTGAGE—Power of mortgagee.

CONTEMPT OF COURT.

[VICTORIA, ACT OF 1866, s. 127]—*Transfer prepared by unauthorised person*—11 Vic., No. 33, s. 13.—Unauthorised persons preparing a transfer of land for reward are guilty under the Act 11 Vic., No. 33, s. 13, of a contempt of Court. *Re STRONG, ex parte CAMPBELL*, 4 A.J.R. 150. (Full Court.)

CONTRIBUTORY NEGLIGENCE.

See REMEDIES FOR DEPRIVATION.

CORRECTION.

Of certificate of title

See CERTIFICATE OF TITLE—(A.)

Cancellation.

CORRECTNESS OF INSTRUMENT.

For purposes of registration—Who should certify

See INSTRUMENTS OF TITLE.

COSTS.

A. COSTS OF ACTIONS.

B. COSTS OF APPEALS FROM REGISTRAR.

C. COSTS OF PROCEEDINGS ON CAVEATS AGAINST APPLICATIONS.

D. COSTS OF PROCEEDINGS ON CAVEATS AGAINST DEALINGS.

A. COSTS OF ACTIONS.

[Q., ACT OF 1861, s. 127.]—Action for deprivation—*Fraud—Redemption from bona fide purchaser for value from fraudulent proprietor.*—The word "costs," in s. 127 of *The Real Property Act of 1861* includes all expenses of litigation necessarily incurred in establishing a plaintiff's claim to damages from the Assurance Fund, including principal and interest due on a mortgage to a second defendant, and that defendant's costs of the action, which principal, interest and costs, had been ordered to be paid as a condition of redemption by the plaintiff to such defendant. The defendant, the Registrar of Titles, was therefore ordered to pay the amount of such principal, interest, and costs to the plaintiff, in addition to plaintiff's costs of the action. *Cox v. BOURNE AND WALTON*, 8 Q.L.J. 66.

[N.Z., ACT OF 1885.]—Action for redemption—*Mortgagee refusing to give discharge on payment of amount due.*—A mortgagee, who was a brewer, refused upon payment of the principal and interest due under the mortgage to execute a discharge of the mortgage except with a reservation of a covenant in the mortgage by which the mortgagor was compelled to purchase liquor from his mortgagee. *Held*, in action by the mortgagee to compel the execution of the discharge, that the mortgagor was entitled to an unqualified release, and that the mortgagee must bear costs of the action. *STAPLES v. MACKAY*, 11 N.Z.L.R. 258. (Court of Appeal).

[Q., ACT OF 1861.]—Vendor and purchaser—*Purchaser failing to investigate vendor's title—Sale subsequently avoided.*—A purchaser, before presenting his transfer, took no steps to investigate the vendor's title. *Held*, that the purchaser, though entitled to other damages, was not entitled to the costs of the registration of his transfer. *MERRY v. AUSTRALIAN MUTUAL PROVIDENT SOCIETY*, B.C.R. 2nd August, 1872.

[Q., ACT OF 1861, s. 89.]—Transmission—*Order against plaintiff for costs in the action—Refusal of plaintiff to obtain transmission—Order for transmission to plaintiff—Defendant to lodge caveat in the meantime.*—M. and the plaintiff were registered proprietors of land as trustees. The land was to the use of plaintiff's daughter as she should by deed or will appoint, and in default of appointment for her own right heirs. She died in July, 1881, an unmarried infant, leaving neither will nor deed. Her father survived her, and brought an action in which judgment was given for the defendants (the present applicants) with costs. Plaintiff refused to pay the costs or to sign a memorandum of transfer from M. and himself as trustees to himself in fee-simple. This was an application by the defendant, under s. 89 of the Act of 1861 for an order upon the Registrar-General to register plaintiff as proprietor of the land by transmission. LILLEY C.J., ordered that transmission should be registered to plaintiff as next-of-kin of his daughter, and the defendants obtained leave to issue execution against him and to lodge a caveat. *BOUEL v. MUNICIPALITY OF COOKTOWN*, 2 Q.L.J. 93

B. COSTS OF APPEALS FROM REGISTRAR.

[VICTORIA, ACT OF 1885, s. 72.]—Successful appeal from Registrar.—On an application to the Court under s. 72 of the Act of 1885 from the

refusal of the Registrar to register a release, costs were allowed to the applicant. *Ex parte CAMPBELL*, 9 A.L.T. 183.

[VICTORIA, ACT OF 1866, s. 135.]—Unsuccessful appeal from Registrar.—*No probable ground for refusal.*—Where, on a summons to the Registrar to uphold the grounds of his refusal to register a transfer, the Court is of opinion that there was probable ground for the refusal, the applicant must, under s. 135 of the Act of 1866, pay the costs. *Ex parte LEACH*, 5 A.J.R. 72. (Full Court.)

C. COSTS OF PROCEEDINGS ON CAVEATS AGAINST APPLICATIONS.

[VICTORIA, ACT OF 1866, s. 135.]—Refusal of application by Registrar—*Summons to Registrar—Costs of summons.*—The Registrar refused to bring certain land under the Act, because he adopted the construction put upon a devise of land by the N.S.W. Court as opposed to a different construction put upon the same devise by the Victorian Court. An appeal to the Privy Council was pending against the decision of the N.S.W. Court. *Held*, that the Registrar was not justified in his refusal, but that he should have postponed the matter; as, however, the Registrar was the guardian of the Assurance Fund, the Court declined to certify that there was "no probable ground for such refusal" on the question of costs under s. 135. *Ex parte BOWMAN*, 7 V.L.R. (L.) 314; 3 A.L.T. 25. (Full Court.)

[TAS., ACT OF 1862, s. 110.]—Refusal of Recorder to bring land under Act—*Appeal—Costs*—By s. 110 of *The Real Property Act*, upon an application to bring land under the Act, the Recorder, if he refuse, may be required to state the grounds of his refusal to issue a certificate and be summoned before the Supreme Court. Where it was objected that the Recorder is only an implement in the hands of the Land Title Commissioners, and that the Court had no power to review their decision: *Held*, that as the Act constitutes the Recorder its executive officer, and as regards the public it is the Recorder who issues the certificate, his decision is reviewable by the Court under this section, but his costs are to be allowed him unless his refusal was based on no probable grounds. *In re FAWNS*, June 28, 1867, *Tas. Dig.*, col. 106.

[VICTORIA, ACT OF 1862, s. 107.]—Refusal of Registrar to bring land under Act—*Summons to substantiate grounds of refusal—Receipt for Crown grant*—The Registrar is not bound to issue a certificate of title to a purchaser from a Crown grantee until the purchaser signs a receipt for the duplicate Crown grant. Summons dismissed with costs. *Semble* (*per Barry J.*), it is the duty of the Supreme Court, which acts as the Exchequer Court of England does in matters of revenue, to protect the revenues of the Crown in the colony. *FTZGERALD v. ARCHER*, 1 W.W. and A'B. [L.] 40. (Full Court.)

[N.S.W., ACT OF 1862, ss. 21-23, AND s. 82.]—Removal of caveat—*No steps to maintain action.*—A caveat was lodged on 21st January, 1876. A writ of summons was issued on 28th April, and was renewed from time to time but never served. Rule nisi to remove caveat under s. 82 made absolute with costs. *Ex parte PENNINGTON*, Knox 317. (Full Court.)

[N.S.W.]—Security for costs—*Applicant a company in liquidation—Companies Act, s. 99*—An applicant to bring land under *The Real Property Act* applied for an order directing a caveator to file his case. The caveator consented, but asked for security as to costs, as the applicant was a company in liquidation. *Held*, that the applicant was not a plaintiff within the meaning of s. 99 of *The Companies Act*. *In re* ANGLO-AUSTRALIAN INVESTMENT, FINANCE AND LAND CO., LTD. (CAMPBELL, CAVEATOR), 9 W.N. (N.S.W.) 128. (Full Court.)

[VICTORIA, ACT OF 1866, s. 25.]—Summons for production of deeds—*Solicitor's lien for costs*.—Where a solicitor retained deeds, claiming a lien on them for costs, and an application was made to compel their production under s. 25, *Held* (per Stawell C.J.), that the matter could not be disposed of in Chambers under that section. *In re* CRAIG, 5 A.L.T. 54.

[N.S.W., ACT OF 1862, ss. 21-23; AMENDING ACT, 1878, s. 4.]—Trial of issues—*Substitution of new caveator*.—The name of a new caveator was substituted in an issue for that of his trustee, upon the terms that the new caveator should pay costs of the motion and give security for the costs already incurred. *In re* BRODZIAK, 2 N.S.W.L.R. (L.) 305. (Full Court.)

[N.S.W., ACT OF 1862, ss. 21-23; AMENDING ACT, 1878, s. 4.]—Trial of issues—*Caveat—Negligence of attorney in not filing case—Caveat removed—Leave to refile caveat*.—The Court ordered the caveator to take the caveat off the file, on the ground that he had not filed his case within the time specified in the order of the Court in that behalf, but on it subsequently appearing that it was owing to the negligence of the attorney who was acting for him that the case had not been filed, the Court set aside the order and gave the caveator ten days within which to file his case. Costs of this application to abide the result of the inquiry into the title. *In re* JONES, 2 W.N. (N.S.W.) 74, 84. (Full Court.)

[N.S.W., ACT OF 1862, ss. 21-23; AMENDING ACT, 1878, s. 4.]—Trial of issues—*Delay*.—On an application to remove a caveat it appeared that the issues had been settled and the caveator made plaintiff. The plaintiff delaying the trial, notice to proceed was given under *The Common Law Procedure Act* of 1863, s. 91, and the caveator not setting the case down judgment was signed. The Court allowed the caveator to retain his caveat on condition that the issues were set down for trial at once, and ordered the caveator to pay the costs of signing judgment and of the application. *In re* EYLES, 2 W.N. (N.S.W.) 110. (Full Court.)

[AMENDING ACT, 1878, s. 4.]—Trial of issues—*Jurisdiction of Court*.—On an application by the caveator, who had filed a case for an order directing the applicant to file a case, the Court dismissed the application with costs, holding that it had no power to make the order. *In re* WILSON, 8 W.N. (N.S.W.) 54. (Full Court.)

[N.S.W., AMENDING ACT, 1878, s. 4.]—Trial of issues—*New trial—Power of amending order—“Party finally successful”*.—At the first trial of issues the jury found for defendant. The Court amended the issue and directed a new trial, but reserved the question of costs. On the second

trial the jury found for plaintiff. The Court discharged a rule nisi for a new trial, giving plaintiff costs of the second trial and of the second new trial motion, but ordering each party to bear his own costs of the first trial and of the first new trial motion. The Court, on motion, amended the order by directing that the defendant should also pay the costs of the first trial and of the first new trial motion, holding that it had no power, looking at s. 4 of the Amending Act, to deprive the plaintiff, who was “the party finally successful,” of his costs. The rule of Queen's Bench, Hilary Term, 3 Jac. I., does not stand in the way of the Court so amending its order and giving a party the right conferred on him by statute. *JONES v. HILL*, 7 N.S.W.L.R. (L.) 369. (Full Court.)

[N.S.W., ACT OF 1862, s. 82; ACT OF 1878, s. 4.]—Trial of issues—*Removal of caveat—Party finally successful—Abortive proceedings*.—The caveators filed a caveat on the ground that part of the land applied for was a public highway. Both applicant and caveators filed their cases under s. 4 of the Act of 1878, and an issue was settled for trial by the Court, and set down for hearing. In consequence of a decision of the Court, in another case, that a caveat could not be filed in respect of a road, the applicant moved to rescind the order sending the issue for trial, and to remove the caveat. The Court made the order, and removed the caveat on the ground that the caveators had no sufficient interest in the land, but said nothing about costs. The prothonotary thereupon refused to tax the applicant's bill. *Held*, that the application to remove the caveat was a proceeding under s. 4; that the applicant was the party finally successful under that section, by which, without any special order of the Court, she was entitled to the costs of the whole proceedings, including the abortive proceedings with respect to the trial of an issue. *TURNER v. LOXTON* 13 N.S.W.L.R. (L.) 115. (Full Court.)

[N.S.W., ACT OF 1862, s. 82; ACT OF 1878, s. 4.]—Trial of issues—*Removal of caveat—Party finally successful*.—The caveator lodged a caveat against the bringing of certain land under *The Real Property Act*, claiming a portion of the land. The applicant, after the caveator had filed his case, took no steps to bring the land under the Act, and subsequently wrote to the caveator, saying that he was willing to withdraw the land claimed by him from his application. *Held*, that the caveator was entitled to an order directing the Registrar-General not to issue a certificate in respect of the land claimed by him, and declaring him the party finally successful. *Re* LAURIE (COHEN CAVEATOR), 15 W.N. (N.S.W.) 108. (Full Court.)

[VICTORIA, ACT OF 1866.]—Vendor and purchaser—*Nudum pactum—Costs*.—When a bargain for the sale of land is made, and the deposit paid, without any representation that the land is under *The Transfer of Land Statute*, or any understanding on the part of the purchaser that it is so, a subsequent agreement by the vendor to pay the costs of bringing the land under the Act is *nudum pactum*, though by mistake of the vendor's agent the formal contract is drawn up with conditions applying to land under the Act. *WATSON v. WATSON*, 12 V.L.R. 433.

D. COSTS OF PROCEEDINGS ON CAVEATS AGAINST DEALINGS.

[VICTORIA, ACT OF 1890, ss. 36, 182.]—Application to rectify title—*Withdrawal—Costs and expenses of caveator*.—Where a caveat has been lodged in respect of an application for rectification of a certificate of title, and the application is withdrawn, the Court has power under ss. 36 and 182 of *The Land Transfer Act*, 1890, to allow the caveator his costs and expenses of his opposition to the application.—*In re WALKER*, 19 A.L.T. 32, 3 A.L.R. 133.

[N.S.W., ACT OF 1862, s. 82.]—Laches of caveator.—Under s. 82 a judge has power to make an order for costs against a caveator who has filed a caveat but taken no steps to prosecute his claim within the time limited by a judge's order. *Ex parte MURPHY*, 10 W.N. (N.S.W.) 120.

[VICTORIA, ACT OF 1866, s. 117.]—No jurisdiction, No costs—*Judicature Act*, 1883, Sec. 10 (7)—*Removal of caveat—Procedure*.—Where a judge has absolutely no jurisdiction to entertain an application made to him, the rule "no jurisdiction, no costs," must prevail. *Ex parte GOLDSBOROETHY*, 8 A.L.T. 181.

[Q., ACT OF 1866.]—Public officer—*Caveator*.—An official assignee who lodged a caveat against dealing with land under *The Real Property Act* and allowed such a caveat to remain on the Register after he had parted with his interest in the land, was ordered to pay the costs of an application to remove the caveat. *In re BEAUCHAMP, Ex parte KEANE*, 1 S.C.R. (Q.) 161.

[S.A., ACT OF 1861.]—Removal.—The Court has no power under *The Real Property Act*, 1861, to give the applicant his costs of a motion to remove a caveat. *In re CLARK AND HARVEY*, 2 S.A.L.R. 191. (Full Court.)

[VICTORIA, ACT OF 1866, s. 117.]—Removal.—A judge has no power under s. 117 to grant the costs of and occasioned by the removal of a caveat. *In re TURNER'S CAVEAT*, 7 A.L.T. 75.

[N.Z., ACT OF 1870.]—Removal.—The Court has power to award costs on an application for removal of a caveat. *D'ALBREDBYLL v. D'ALBREDBYLL*, L.R. 3 S.C. 391.

[VICTORIA, ACT OF 1890, s. 145.]—Removal—Jurisdiction of Full Court as to costs.—The Full Court has power to deal with the question of costs in proceedings to remove a caveat. *In re ANNAND*, 17 V.L.R. 108; 12 A.L.T. 107. (Full Court.)

COUNTER CLAIM.

Specific performance of agreement for sub-lease

See LEASE.

MUNBO AND BAILLIEU v. ADAMS, 17 V.L.R., 703.

COUNTY COURT.

Jurisdiction of, as to Caveats

See CAVEATS AGAINST DEALINGS.

COURT.

Power of, on appeal from refusal to bring land under Act

See BRINGING LANDS UNDER ACT—(E) Miscellaneous Cases.

RIDGE v. RECORDER OF TITLES, 9th October, 1890, Tas. Dig., col. 103.

COVENANT.

See MORTGAGE—Covenant.

See MORTGAGE—Power of sale.

By mortgagor to observe rules of loan society

See MORTGAGE—Distress.

By lessee

See LEASE.

By lessor

See LEASE.

Running with land

See LEASE.

See MORTGAGE—Leaseholds.

To be implied by reference to a certificate of title on the sale of land

See REMEDIES FOR DEPRIVATION.

In mortgage for custody of certificate of title

See MORTGAGE—Powers of mortgagee

To indemnify transferor, right to prove under in liquidation of transferee company—Land subject to mortgage

See MORTGAGE.

In re ALFRED SHAW AND CO., LTD., Ex parte MURPHY, 8 Q.L.J. 70.

CREDITORS.

Dealing with land in fraud of

See FRAUD.

Trustee for, duty of

See LEASE.

CRIMINAL LAW.

[VICTORIA, ACT OF 1866.]—Evidence—*False Declaration*.—The prisoner was charged with making a false declaration in bringing land under the Act, and with having unlawfully and fraudulently obtained a certificate of title from the Registrar. The only evidence for the prosecution was that appearing on the application and declaration produced by the proper officer from the Office of Titles, and the certificate of title granted thereon, and the reasonable inference to be drawn therefrom, together with evidence that the material statements in such declaration were false. *Held*, that the evidence was sufficient to support a conviction. *R. v. AEDY*, 13 V.L.R. 746, 9 A.L.T. 143. (Full Court.)

[VICTORIA, ACT OF 1866, s. 157.]—Evidence—*Obligation to make discovery—Insolvency Act*, 1890, No. 1102, ss. 3, 134, 135.—The provision of s. 157 of the Transfer of Land Statute is limited to proceedings under that Act, and does not affect the liability of an insolvent under ss. 134 and 135 of *The Insolvency Act*, 1890, and, therefore, his depositions taken at a compulsory

examination under the last-mentioned Act are admissible as evidence against him. *R. v. McCoox, R. v. JOHNSON*, 5 V.L.R. (L.) 38. (Full Court).

[S.A., Act of 1861.]—*Forgery—Undertaking for payment of money—Mortgage.*—A memorandum of mortgage under *The Real Property Act*, 1861, is not an undertaking for the payment of money within the meaning of s. 1 of Act No. 7 of 1859, and cannot be so charged in an information for forgery. *R. v. TIDEMAN*, 5 S.A.L.R. 48. (Full Court.)

[Q., Act of 1861, s. 142.]—*Forgery—Certificate of title—Forgery Act of 1865* (29 Vic., No. 3), s. 34.—For a prosecution under these sections, see the remarks of Lutwyche A.C.J., in *R. v. PETERSON*, B.C.R., 26th November, 1878.

[VICTORIA, Act of 1866, s. 153.]—*Fraud—False description in application.*—A false statement in an application to bring land under the Act—e.g., that the land was unoccupied when it was, in fact, occupied—is not necessarily fraud within s. 153—there must be a guilty intent. *Seemle*, there should first be a conviction under s. 153, and then civil proceedings should be taken to declare void the certificate of title issued on such application. *WIGGINS v. HAMMILL*, 4 V.L.R. (L.) 63. (Full Court.)

CROWN.

Who must lodge caveat against application on behalf of

See BRINGING LAND UNDER ACT.

Caveat on behalf of

See CAVEAT AGAINST DEALINGS.

Bound by Prescription Act as to light

See EASEMENT.

Escheat

See BRINGING LAND UNDER ACT (A).

Information of intrusion by—Application of Nullum Tempus Act to New South Wales

See ADVERSE POSSESSION.

ATTORNEY-GENERAL *v.* LOVE, 15 W.N. (N.S.W.) 132; 1898 A.C. 679.

The Crown is bound by the provisions of the Real Property Acts

See CROWN GRANT.

ATTORNEY-GENERAL OF VICTORIA *v.* GOLDSBROUGH, 15 V.L.R. 638.

[VICTORIA, Act of 1866, ss. 15, 47.]—*Lease—Mining lease from Crown—Certificate of title for.*—Where a Crown lease is voidable by declaration of the Governor-in-Council, it cannot be held after such declaration by reason of the lessee being registered as proprietor of the lease. *MATT v. FEEL*, 2 V.R. (M.) 27; 2 A.J.R. 133.

CROWN GRANT.

Discrepancy between, and survey

See BOUNDARIES.

[N.S.W.]—*Alienation—Proviso against.*—A grant to M. contained a proviso that "the said

M. . . shall in no wise . . . sell, alienate or transfer any part or parcel of the land hereby granted within the said term of five years . . . otherwise the whole of the said land shall revert to the Crown, and the grant hereby made thereof shall be held and deemed null and void." M. alienated within five years. *Held*, that by the proviso the grant was voidable only at the option of the Crown, and that such avoidance must be evidenced by entry or inquest of office. *FISHER v. GAFFNEY*, 5 N.S.W.L.R. (L.) 276; 1 W.N. (N.S.W.) 18. (Full Court.)

[N.S.W., Act of 1862, s. 40.]—*Conditional purchaser—Priority.*—A grant issued to a person not entitled to it confers no indefeasible title as against a previous conditional purchaser under *The Crown Lands Alienation Act* of 1861. *MATE v. NUGENT*, cited in *CHISHOLM v. MACAULEY*, 7 S.C.R. (N.S.W.) 316. (Full Court.)

[S.A., Act of 1861.]—*Fraud—Innocent mortgagees for valuable consideration.*—*Quere*, whether a land grant obtained by fraud is not good as between the Crown and innocent purchasers or mortgagees for valuable consideration? *ATTORNEY-GENERAL v. O'SULLIVAN*, 12 S.A.L.R. (Eq.) 90.

[Tas.]—*Fraud before Crown grant—Trusts—Scire facias.*—Where fraudulent dealings had taken place before the issue of a grant from the Crown, an application to the Court to declare certain trusts upon the grant was refused, the only remedy suggested for the case being by *scire facias*. *SOLOMON v. SOLOMON*, Nov. 22, 1861. Tas. Dig. col. 103.

[Tas.]—*Fraud in obtaining grant—Scire facias only remedy.*—A Crown grant when once it is enrolled is conclusive against the Crown on the one hand, and those claiming under it on the other; if it were obtained by fraud it may be set aside by *scire facias*, but until then its enrolment is a record of the Court, and consequently conclusive. *In re CLERKE*, March 9, 1871; *In re ASA MOSS*, May 8, 1895, Tas. Dig. Col. 104.

[Tas.]—*Fraudulent grant—Scire facias—Rights existing in respect of land before grant—Defeated lien*—6 Will. IV., No. 1, ss. 14, 15.—I., being entitled to a grant of land, in order to avoid a debt owing by him to J., conveyed to S. on trust for I.'s wife. No consideration passed, and S. subsequently applied for and obtained the grant, to repeal which a *scire facias* was brought. On appeal, the case turned on whether or not J. had any right or interest in the land recognisable by the Court which could be affected by the grant; and it was *held* that rights and interest in respect of lands may exist before the issue of a grant, being recognised by 6 Will. IV., No. 11, ss. 14, 15, and that as by recovering judgment for his debt J. could obtain a lien on I.'s land, he had at the time of his action an inchoate right for a lien which was defeated by the grant to S.; which right the Court could not enforce, but was bound to notice. That as J. had a right recognised by law in respect of the land by reason of the debt due to him, which right had been defeated by the fraudulently obtained grant, the grant must be set aside as void, and the letters patent repealed, as the Sovereign cannot be made the instrument of fraud. *QUEEN v. SOLOMON*, August 28, 1863, Tas. Dig. Col. 103.

[VICTORIA, ACT OF 1866, ss. 36, 40, 129]—*Illegality of—Land Act of 1869 (No. 360)—Illegality cured by Land Act, 1884 (No. 812), s.15—Grant—Surrender—Registration—Caveat—What constitutes fraud in Crown grantee—Crown bound by provisions of Transfer of Land Statute—Meaning of “Governor” in Land Acts—Advice of Ministers to Governor—Laches on part of Crown—Action by way of information to cancel Crown grant—Form of statement of claim—Practice.*—The defendant Williams, at a sale of Crown lands in 1868, bought the land in question for £300, subject to a condition (which was read before the sale, but which he alleged he did not hear, owing to deafness) that the Crown might resume possession at any time on certain terms. W., on becoming aware of the condition, protested against it, and the Minister agreed to ultimately issue to him a grant free from the condition. W. meantime accepted a grant containing the condition and remained in possession until 1872, when he addressed a letter to the same Minister, asking him to remove the objectionable condition. The Minister ordered a reconveyance to the Crown to be accepted and an ordinary grant to be issued. Thereupon an instrument of surrender, dated 3rd April, 1872, prepared in the Crown Solicitor's office, was endorsed on the duplicate original grant and was executed by W. in consideration of ten shillings. The original duplicate grants were then duly cancelled; an entry of the date of surrender was made on each, and they were kept in the Register Book in the Titles Office. A new grant of the same land without the condition, dated 10th April, 1872, was signed by the Governor and duly sealed, and the entry of the original grant in the Register Book was cancelled. The second grant, like the first, recited a consideration of £300, but no second sum of £300 was in fact paid. No steps were taken by the Crown until 1878, when the Registrar, on behalf of Her Majesty, lodged a caveat prohibiting any dealing with the land, but no proceedings were instituted on behalf of the Crown. In February, 1888, W. sold the land to the defendants, Goldsborough and Co., who were cognisant of all the transactions that had taken place. Later in the same year the present action was started by way of information by the Attorney-General, praying that the Crown grant of 10th April, 1872, might be delivered up to be cancelled. The claim did not set out any distinct ground of forfeiture. It contained an undertaking by the Attorney-General on behalf of Her Majesty that upon delivery up and cancellation of the Crown grant a new grant containing the original condition would be issued. No fraud was alleged against the advisers of the Crown, and there was no evidence that they were in any way deceived. The defendants contended that the existing grant was legally issued, or if illegally issued its illegality was cured by Act No. 812, s. 15. *Held (inter alia)*, per Higinbotham, C.J., that the second grant was valid; that the registration of the surrender, though not regular, was a good registration under ss. 36 and 40 of the *Transfer of Land Statute*; and that the first grant was thereby effectually surrendered. Delay in impeaching Crown grants may constitute laches on the part of the Crown in the same manner as it would constitute laches on the part of a private individual. The Crown is bound by the provisions of the *Transfer of Land Statute*.

Under s. 129 (3) of the statute the duty of the Registrar, when directed to lodge a caveat on behalf of the Crown as prescribed in the first portion of the subsection, is not limited by any of the subsequent words or to the cases mentioned in the subsequent parts of the subsection. *Held*, on appeal, that the second Crown grant was originally illegal, but that the effect of s. 15 of the Act No. 812 was to give validity to all grants issued by the Crown, and that by virtue of that section this grant was made legal and valid against the Crown. *ATTORNEY-GENERAL v. GOLDSBOROUGH AND OTHERS*, 15 V.L.R., 638. (Full Court.)

[S.A., ACT OF 1861.]—*Leases under Colonial Act—Scire facias—Record—Supreme Court of South Australia.*—Leases granted by the Governor of South Australia, under powers conferred on him by the Colonial Act, 21 Vic., No. 5, s. 13, for regulating the sale and other disposal of waste lands belonging to the Crown, sealed with the public seal of the Province, but not enrolled or recorded in any Court, are not in themselves records; and though bad on the face of them, being for a larger quantity of land than allowed by that Act, cannot be annulled or quashed by a writ of *scire facias*. Such writ is a prerogative judicial writ, which must be founded on a record, and cannot, under the constitution of the Supreme Court in South Australia, issue out of that Court. The proper remedy for an unauthorised possession of lands of the Crown in the colony, is by an information in Chancery or writ of intrusion. *QUEEN v. CLARK*, 7 Moo. P.C.C. 77, *commented on and explained*. *QUEEN v. HUGHES*, 1 S.A.L.R. 143; L.R. 1 P.C. 81.

[N.S.W.]—*Scire facias.*—Section 137 of *The Crown Lands Act of 1884* (48 Vic., No. 18), which enacts that every grant “issued under this Act, or any Act hereby repealed, shall be deemed to be a record of the Supreme Court,” is retrospective, and applies to grants issued before the passing of the Act, and therefore *scire facias* will lie to repeal any such grant. *R. v. REDHEAD COAL MINING Co.*, 7 N.S.W.L.R. 279; 3 W.N. (N.S.W.) 59. (Full Court.)

CROWN LANDS.

Caveat as to

See CAVEAT AGAINST DEALINGS.

CROWN LANDS ACTS.

*See CERTIFICATE OF TITLE — (B)
Conclusive Effect.*

DAMAGES.

See DETINUE.

Measure of

See REMEDIES FOR DEPRIVATION.

Pleading of—Error in survey

See PRACTICE.

Claim for, for negligent survey

See BOUNDARIES.

ARCHARD v. ELLERKER, 10 A.L.T. 196.

DE BENE ESSE.

See EVIDENCE.

DEATH.

Of transferor after execution, but before registration of transfer—Effect of

See TRANSFER.

DEDICATION.

Of reserve

See EASEMENT.

Of road

See BRINGING LAND UNDER ACT—*Trial of issues.*

See EASEMENT.

DEED OF GRANT.

See CROWN GRANT.

DEFAULT.

Proof of, required by Registrar on transfer by mortgagee

See REGISTRAR, DUTIES OF.

DELAY.

In bringing action against Assurance Fund

See REMEDIES FOR DEPRIVATION.

DEMURRER.

See BRINGING LAND UNDER ACT—
(e) *Miscellaneous Cases.*

DEPOSIT.

Of certificate of title—Effect of
See SALES BY SHERIFF.

Of certificate of title in the name of another as security for loan to depositor—Rights of deposit

PLUMPTON v. PLUMPTON, 11 V.L.R. 733.

Of deed of grant or certificate of title
See MORTGAGE—*Equitable Mortgage*

Of deeds—Advance by bank on deposit of deeds contrary to Act of Incorporation—Effect of subsequent transfer
See TRANSFER.

Of nomination of trustees creates an equitable mortgage

BURRELL v. HOPE, B.C.R., 15th August, 1871. (Paul D.C.J.).

Of transfer and certificate of title as security—Effect of
See TRANSFER.

DETINUE.

[N.Z.]—Certificate of title—*Detention of—Damages.*—In an action for detention of a certificate of title where no special damages are claimed or proved, £100 damages are excessive. *SCHROEDER v. HARCOURT*, 5 N.Z.L.R. 226.

[Q., ACTS OF 1861 AND 1877.]—Certificate of title—*Detention of—Damages.*—Where a plaintiff alleged that, in consequence of the detention by the defendant of his certificate of title, he was unable to pledge or deposit it by way of equitable mortgage for a sum which would have enabled him to pay his interest, and through his inability to pay the interest, he lost the property, *Held*, that damages claimed for such detention were too remote. *CLARKSON v. MUTUAL LIFE ASSOCIATION OF AUSTRALASIA*, B.C.R., 2nd April, 1879.

[VICTORIA.]—Certificate of title—*Lien on.*—*Quære*, whether any right of lien can be acquired over a certificate of title? *SWAN v. SEAL*, 10 V.L.R. (Eq.) 57, 66; 5 A.L.T. 196.

[VICTORIA.]—Vendor and Purchaser—*Purchase by father in name of son—Presumption of Advancement—Reservation of estate by father.*—A father bought land and procured the certificate of title to be made out in the name of his son. The father's intention was that the son should have the land after his death, and that meanwhile he (the father) should enjoy the estate, with the understanding that the son should occupy and work the land, giving the father half the produce and retaining the other half. In an action by the son to recover the certificate of title from the father, *Held*, that the presumption of an advancement was destroyed by the reservation by the father of a life estate; that the son was therefore a trustee for his father, and that the father was entitled to retain the certificate and to have a transfer of the land to him executed by the son. Judgment of Hood, J., affirmed. *M'KIE v. M'KIE*, 19 A.L.T. 190. (Full Court.)

DEVISE

Of land under Act held in trust

Registration of devise

See TRUSTS AND EQUITIES—*Recognition of trusts.*

DEVISEE.

Power to sell land devised by testator holding as administrator of estate

See TRUSTS AND EQUITIES—*Recognition of trusts.*

DISCONTINUANCE.

Of possession

See ADVERSE POSSESSION.

See REMEDIES FOR DEPRIVATION.

DISCRETION.

Of Registrar

See REGISTRAR, DUTIES OF.

DISPUTED BOUNDARIES.

See BOUNDARIES.

DISTRESS.

See MORTGAGE—Powers of mortgagee.

DISTRICT COUNCILS ACT 1858 (S.A.)

Sale under.

NEILL v. LINDSAY, 13 S.A.L.R. 196.

DISTRICT LAND REGISTRAR.

Duty of to determine priorities

See CAVEAT AGAINST DEALINGS.

DOWER.

See BANKRUPTCY.

Limitation of action for

See REMEDIES FOR DEPRIVATION.

DUMMYING.

See CERTIFICATE OF TITLE—Conclusive effect.

DUPLICATE

Of instrument under the Act—To be deemed an original for probative purposes

See EVIDENCE.

[S.A., ACT OF 1861.]—Instrument—Registration.—An instrument, such as a mortgage, cannot be registered unless it has been executed in duplicate. *Re SKERRETT*, 2 S.A.L.R. 21. (Full Court).

EASEMENT.

Power of owner of servient tenement to caveat against application

See BRINGING LAND UNDER ACT—Caveat.

Right-of-way—Paramount title—As to a right-of-way prevailing over a certificate of title, although not notified therein as an encumbrance

See EASEMENT.

LEAN v. MAURICE, 8 S.A.L.R. 119.

Right-of-way—Issue of certificate of title of servient tenement showing right-of-way to which the land is subject (in South Australia)

See BRINGING LAND UNDER ACT—Conflicting Claims.

Re SCHMID AND FIELD, 15 S.A.L.R. 48.

Right-of-way—As to power of Registrar on issue of certificate of title of dominant tenement to designate easement over land already under the (Victorian) Act

See BRINGING LAND UNDER ACT—DUTIES OF REGISTRAR.

Re BYRNE, Ex parte METROPOLITAN PERMANENT BUILDING SOCIETY, 10 V.L.R. (L.) 361; 6 A.L.T. 171.

EASEMENT.

A. RIGHT TO LIGHT.

B. RIGHT-OF-WAY.

1. Creation.

(a.) Public right-of-way.

(b.) Private right-of-way.

2. Evidence.

3. Loss or abandonment.

4. Registration.

A. RIGHT TO LIGHT.

[N.Z., ACT OF 1885, ss. 55, 57.]—Light—Prescription Act (2 and 3 Wm. IV., c. 71)—Application to colony—Crown bound by—Acquiescence.—The Prescription Act (2 and 3 Wm. IV. c. 71) is in force in the colony of New Zealand. In order to establish a right to light, it is sufficient if the parties claiming the right and their predecessors in title have actually enjoyed the light in the character of an easement for more than 20 years before the commencement of the proceedings, occupying the land on which the building stands, as of right, during that period; and it is immaterial whether they have had a good title to the land throughout the period. So far as light is concerned, the acquisition of a right under The Prescription Act is altogether independent of any presumed grant, and therefore of the capacity of the owner of the servient tenement to make a grant. The Prescription Act binds the Crown in regard to light as well as other easements. Lights had been enjoyed for more than 20 years before the servient tenement was brought under The Land Transfer Act. The owners of the dominant tenement acquiesced in the bringing of the servient tenement under the Act, and brought no action to establish their right to the light for more than a year afterwards. Held that, notwithstanding the peculiar wording and construction of s. 4 of The Prescription Act, that section could not be read in conjunction with s. 57 of the Act of 1885, so as to divest rights which s. 55 of that Act had expressly preserved. *NEW ZEALAND LOAN AND MERCANTILE AGENCY CO., LTD. v. WELLINGTON CORPORATION*, 9 N.Z.L.R. 10. (Court of Appeal.)

B. RIGHT-OF-WAY.

(1.) Creation.

(a) Public Right-of-way.

[Q., ACT OF 1861, ss. 119, 120.]—Closing road—Public highway—Subdivision of land.—A road leading from a public highway into a place where there is no thoroughfare is not necessarily a public road. *Ex parte LE GOULD*, 1 S.C.R. (Q.) 130. (Full Court).

[Q., ACT OF 1861.]—Closing of roads dedicated by private persons—Dedication of land for road purposes—Deed of grant for land in closed road—Crown Lands Act of 1884, ss. 89, 90—Crown Lands Act Amendment Act of 1889, ss. 16, 17—Corrected Titles to Land Act of 1892.—A new deed of grant can be issued by the Crown under s. 17 of The Crown Lands Acts 1884 to 1886 Amendment Act of 1889 for land which has been dedicated for a road by a private person, who still remains registered in the Real Property Office as the proprietor in fee-simple of the land, without a transfer to the Crown of his

interest in the land. *Re KELLETT'S GRANT*, 7 Q.L.J. 10. (Full Court).

[N.Z.]—Deposited plan—"Reserve"—*Right to sell*.—A registered proprietor of land who lays out a township, and deposits a plan thereof in the District Land Registry, on which an allotment is shown as a reserve, does not lose his right to sell the allotment, so long as no specific purpose for the reserve is stated, and it does not appear that it was held out by way of inducement to the purchasers of other allotments to buy. *Semble*: Had the allotment been reserved for some specific public purpose, the purchasers of the other allotments would have gained rights in respect of it, and the proprietor could not, in such case, use it, except for the purpose for which it was reserved. *In re MILLER*, N.Z.L.R. 5 S.C. 199.

[S.A., AMENDING ACT, 1878, s. 61.]—Deposited plan—*Private right-of-way—Public road—Dedication—Easement Act* (No. 228 of 1881).—Where a plan is deposited in the Lands Titles Office under the provisions of *The Real Property Act* (No. 128 of 1878), s. 61, all roads and ways shown thereon become dedicated to the public, unless there be something on the face of the plan to show that any roads or ways marked thereon are not intended to be public roads or ways. *Per* Way C.J.: Roads where the freehold is marked out vest in the co-terminous proprietors. In order to establish a private right-of-way over land under the provisions of *The Real Property Act*, it must be set out in the certificate of title to the land over which the right is given. *BORN v. HUNTLEY*, 20 S.A.L.R. 33. (Full Court).

[N.Z., ACT OF 1870, s. 107.]—Deposited plan of subdivision—*Transfer by reference to—Roads—Representation—Dedication*.—Where a block of land, the title to which is under the Land Transfer Acts, has been subdivided, and a plan thereof deposited under s. 107 of the Act of 1870, showing on its face proposed lines of road, a purchaser of part of this land, whose certificate of title describes his allotment by reference to the deposited plan, has a right to the use of all the roads shown on the plan, and the vendors cannot close them without his consent. The vendors are not bound to hold such land till they can sell it in allotments as shown on the plan, but they can lease the whole of the unsold portion for pastoral purposes, provided the rights of purchasers to the use of the roads are not interfered with. *Quære*: Whether the deposit of such a plan, and the sale of any of the allotments, amounts to a dedication of the roads shown on the plan. *BAIRD v. JACKSON*, N.Z.L.R. 2 C.A. 271.

[Q., ACT OF 1861, ss. 14, 119, 120.]—Deposit of plan of subdivision showing road—*Special case*.—A piece of land under the Act was subdivided and the plan duly recorded in the office. Le G. purchased lots 6, 7, 8, and 9, and a certificate of title for the land comprised in these lots was issued to him. He subsequently purchased the remaining part of the portion, including a roadway which divided the portion, and requested the Registrar to issue a certificate in his favour for the land comprised in lots 6-9, including the roadway through the centre, or to cancel the certificate originally issued for lots 6-9, and issue a certificate in his favour for the whole portion. Le G. subdivided the land, whereby two roads

were opened from a Government road, and sold several lots. The Court held the road in the original plan was not necessarily a public road. There could be no doubt that there might be a public highway over a place where there was no thoroughfare (*BATEMAN v. BLUCK*, 18 Q.B. 870), but the existence of the highway was a question of fact, and nothing could be gathered from the special case or the map to show an user by, or dedication to, the public of the road in question. *Held*, also, that *WOODYER v. HADDEN*, 5 Taunt. 126, was not materially distinguishable from the case stated. The decision of Chambre J. that an unequivocal act of dedication would instantly make the road a highway, as in the present case, if the second proposed subdivision were accepted, was approved of. Special case referred back to Registrar, with intimation of opinion. *Ex parte LE GOULD*, 1 S.C.R. (Q.) 130. (Full Court).

(b) Private Right-of-way.

[VICTORIA, ACT OF 1866, ss. 36, 49.]—Easement created under power of attorney—*Excessive exercise of power*.—Where an attorney-under-power, acting in excess of the authority conferred on him, executed a transfer and grant of an easement of right-of-way under the Act, *held*, that, inasmuch as the instrument so executed purported to transfer and grant an incorporeal hereditament, it was an "instrument purporting to affect land" within the meaning of s. 36, and, therefore, upon registration under that section, the grantee, in the absence of fraud, became, by virtue of ss. 36 and 49, the registered proprietor of the easement of right-of-way mentioned in the instrument, and entitled to exercise the rights of a registered proprietor. *MAGOR v. DONALD*, 13 V.L.R. 255, 8 A.L.T. 150. (Full Court).

2. Evidence.

[VICTORIA, ACT OF 1866, s. 64; ACT OF 1878, ss. 2, 3]—Certificate of title—*Right-of-way appearing in—Action for obstructing right-of-way over defendant's land*.—Plaintiff produced his certificate of title, showing a right-of-way on the plan in the margin. Defendant's certificate of title also showed plaintiff's right-of-way. *Held*, that either certificate of title was conclusive evidence of plaintiff's title to the easement. *Semble*, if an error is made as to the width or other particulars of the right-of-way, a new certificate of title, with a correct description, may be issued. *JONES v. PARK*, 5 V.L.R. (L.) 167; 1 A.L.T. 10. (Full Court).

[S.A., ACT OF 1861.]—Certificate of title—*Transfer of—Right-of-way*.—A certificate of title under *The Real Property Act* of 1861 is no evidence of title to rights-of-way over other lands endorsed thereon. A person claiming rights-of-way over land under the Act must prove a transfer of such rights from the registered proprietor of the servient tenement, and such transfer must be registered on the certificate of title of the transferor, and (*semble*) of the transferee also. Plaintiffs, in an action for obstruction of their right-of-way, produced as evidence of their title a certificate of title which certified that they were registered as proprietors of certain land together with a right-of-way over certain other lands not comprised in their certificate of title. *Held*, that the certificate of title was not

evidence of plaintiffs' title to the right-of-way; and, *per Gwynne, J. (diss. Way C.J., and Boucaut J.)*, that the certificate of title, inasmuch as it certified what was unwarranted, was wholly invalid, not only as to the right-of-way but also as to the whole of the land comprised in such certificate. *FORMBY v. CORPORATION OF ADELAIDE*, 14 S.A.L.R. 144. (Full Court).

[Q., ACT OF 1861, s. 119].—Dedication of road.—*Subdivision of land—Deposit of map.*—The owner of certain land under the Act having subdivided it into allotments for the purpose of sale, deposited with the Registrar-General a map showing the subdivisions and streets, in accordance with s. 119 of the Principal Act. The map showed a street running through the land called Gotha street. Subsequently to the deposit of the map, the land having been assessed for rating purposes in one block, the owner procured its assessment in the subdivisions shown on the map, and from that time he paid no assessment on Gotha street. The land soon after its subdivision was advertised for sale by auction, and described as having been subdivided into twenty allotments, Gotha street intersecting them. To the majority of the allotments there would have been no access but through Gotha street. *Held*, that there was sufficient evidence of the dedication of Gotha street as a public road or highway. *O'QUINN v. REGISTRAR-GENERAL*, 1 Q.L.J. Supp. 7.

3. Loss or Abandonment.

[VICTORIA, ACT OF 1866, s. 49; ACT OF 1878, s. 2; ACT OF 1885, s. 41].—Abandonment of easement.—*Transfer of land—Error in certificate.*—On a claim to assert a right-of-way granted in 1839, to which it was pleaded the right had been abandoned: *Held*, that the omission in the certificates of title to the respective tenements to record an easement did not bar the claim to the easement or relieve the servient tenement of its liability. Whether an easement has been abandoned is a question of intention to be determined on the facts in each case. Provisions of the Transfer of Land Statutes as to easements considered. *JAMES v. STEVENSON*, 15 V.L.R. 615; 11 A.L.T. 107; 1893 A.C. 162.

[N.Z.].—Loss of easement.—*Easement not noted on certificate of title of servient tenement.*—When a certificate of title is granted reserving over other lands an easement which was granted by deed before the land was brought under *The Land Transfer Act*, the servient tenement remains subject to the easement, even if it has subsequently been brought under the Act, and the certificate of title therefore contains no mention of the easement to which the land is subject. The plaintiff, in such a case, can recover substantial damages, although he cannot prove the existence of the easement over other lands, without which that over the defendant's lands would be useless, so long as he can prove that he has been able to use the latter easement beneficially. *ANDERSON v. MAORI HILL BOROUGH COUNCIL*, N.Z.L.R. 3 S.C. 364.

[VICTORIA].—Loss of easement on private land.—*Power of resumption—Melbourne Corporation Act* (14 Vic., No. 20).—When a lane set out on private land has been brought under the provisions of *The Melbourne Corporation Act* (14 Vic., No. 20), the Act does not confer on the adjoining owners and occupiers such right of

passage over it as precludes the owner in fee from ever resuming the control or exclusive possession of such lane. *MOWBRAY, ROWAN AND HICKS v. DREW*, 1893 A.C. 295.

[S.A., ACT OF 1861].—Loss of easement.—*Registration under Registration Act of 1841—Caveating capacity of owner of easement.*—In accordance with *The Registration Act* of 1841, priority of registration to create priority of title must be by memorial, as provided by such Act, and a registration under *The Real Property Act* is not such a registration as to give priority over a prior unregistered instrument. There may be rights of-way and other easements existent in respect of land under *The Real Property Act* of 1861, though such rights-of-way and easements do not appear on the register or certificate of title. The owner of an easement has no caveating power; and, *semble*, easements are not in any way subject to the operation of *The Real Property Act*. A. and B. (the mortgagors) and C. (the mortgagee) of a section of land by indenture duly executed, but not duly attested, granted a right-of-way over the same to D.; subsequently C. re-conveyed to A. and B. without mention of the right-of-way, and A. and B. applied to have the land brought under the provisions of *The Real Property Act* of 1861, and a clean certificate of title in their names was accordingly issued. The land was afterwards mortgaged by A. and B., and sold by the mortgagee to the defendant, but neither in the application nor in the certificate of title issued pursuant thereto, nor in any way of the subsequent dealings, was any mention made of the right-of-way, or action for obstructing the way. *Held*, (1) that there had been no registration, within the meaning of *The Registration Act* of 1841, such as to destroy the right-of-way vested in the plaintiffs; (2) That the certificate of title was evidence only that the person named therein as proprietor held the land subject to such encumbrances, liens, and interests as were notified thereon, but that easements did not come within any of these definitions, and, consequently, there might be a right-of-way not so notified. *LEAN v. MAURICE*, 8 S.A.L.R. 119. (Full Court).

4. Registration.

Endorsement of easement on title.—*Right-of-way.*—*Semble*, that where, on an application to bring land under the Act, the applicant's title deeds disclose a right-of-way, it is the duty of the Registrar to endorse it on the certificate. *In re HOUSON (SHEPHERD SMITH CAVEATOR)*, 14 W.N. (N.S.W.) 3; 18 N.S.W.L.R. (L.) 300. (Full Court.)

[VICTORIA, ACT OF 1866, ss. 4, 17, 64].—Easement, how registered.—Section 64 of Act No. 301 provides for the registration of an easement by entry upon the folium of the register which represents the servient tenement. No entry can be made on the folium representing the dominant tenement, but the use of the word "land" will, by virtue of s. 4, carry with it any easement to which the owner of the dominant tenement can be shown by evidence external to the register to be entitled. There is no provision for registering easements over land not brought under the Act; only such incorporeal hereditaments as are actual estates in land over land not under the Act can be registered. *In re TRANSFER OF LAND STATUTE, Ex parte CUNNINGHAM*, 3 V.L.R. (L.) 199. (Full Court).

[VICTORIA, ACTS OF 1866 AND 1878.]—**Procedure to compel registration of easement.**—There are no means provided by the Act by which the owner of a tenement alleged to be servient can contest the claim of the owner of the tenement alleged to be dominant to have registered an easement over the alleged servient tenement. *In re BYRNE, Ex parte METROPOLITAN BUILDING SOCIETY*, 10 V.L.R. (L.) 361, 6 A.L.T. 17. (Full Court).

[VICTORIA, ACT OF 1866, s. 4.] — **What easements are registrable.**—Only easements appurtenant to land under the Act can be entered upon the register. Where, therefore, the owner of land granted a right-of-way over his land to an adjoining owner, *held*, that this was merely a way in gross, which could not be assigned, and should not be registered. *In re TRANSFER OF LAND STATUTE, Ex parte JOHNSON*, 5 W.W. and A'B. (L.) 55.

EJECTMENT.

See ADVERSE POSSESSION.

See BANKRUPTCY.

See CERTIFICATE OF TITLE — (B) *Conclusive effect.*

See LEASE.

See MORTGAGE—*Powers and remedies of mortgagee.*

See REMEDIES FOR DEPRIVATION.

Action for, against holder of possessory title

See ADVERSE POSSESSION.

[VICTORIA, ACT OF 1866.] — **Evidence.** — Where the defendant appeared and the plaintiff produced his certificate of title, *held*, that he need not prove possession by the defendant. *VALLANCE v. CONDON*, 3 V.L.R. (L.) 83.

ENDORSEMENT.

Of interests in land on certificate of title

See REGISTRAR, DUTIES OF.

EQUITABLE MORTGAGE.

See MORTGAGE.

EQUITABLE MORTGAGEE.

Rights of

See CERTIFICATE OF TITLE—*Error.*

Rights of as against Sheriff's transferee.

See SALES BY SHERIFF.

EQUITABLE PLEA.

To action of ejectment

See REMEDIES FOR DEPRIVATION.

EQUITABLE TITLE.

Of caveator against application

See BRINGING LANDS UNDER THE ACT — *Caveat.*

HODGSON v. HUNTER, 3 A.J.R. 13.

EQUITY.

See FRAUD.

See TRUSTS AND EQUITIES.

EQUITY OF REDEMPTION.

Sale of under fi fa

See SALES BY SHERIFF.

ERROR.

See BOUNDARIES.

In certificate of title

See CERTIFICATE OF TITLE.

Land wrongly specified in statement for registration of fi. fa.—Effect of Sheriff's sale

See SALES BY SHERIFF.

Wrong land sold by Sheriff

See SALES BY SHERIFF.

HASSETT v. COLONIAL BANK, 7 V.L.R. (L.) 380.

Taking advantage of

See FRAUD—*Mistake.*

Sale and transfer of wrong land.

[VICTORIA, ACT OF 1866.]—Plaintiff owned two paddocks, known as "the 'homestead paddock'" and "the bush paddock." By a mistake of himself and his auctioneer the land advertised for sale was that included in the certificate of title of the homestead paddock. Plaintiff intended to sell the bush paddock. Defendant thought he was buying the homestead paddock. Defendant paid the purchase money and received the transfer and certificate of title. A decree was made for a re-transfer on payment of purchase money, interest, and costs. *ASHLEY v. COOK*, 2 A.L.T. 2, 50. (Full Court.)

[N.Z., ACT OF 1885, ss. 10, 190.]—Certificate of title issued on void order of freehold tenure in respect of native land—*Bona fide purchaser—Mortgagee.*—Section 10 of the Act of 1885, as to what land is to be deemed subject to the provisions of the Act, is not mandatory for all purposes, and the words "under the provisions of this Act" in s. 190 of that Act, which protects *bona fide* purchasers for value and mortgagees, ought to be read as qualifying the words "purchaser or mortgagee," and the section construed as if the words "of land" had been transposed so as immediately to follow the words "purchaser or mortgagee." [*In re CARGILL*, 7 N.Z.L.R. 481—*ante* BRINGING LAND UNDER ACT (A.). *dissented from*]. *In re OKIRAE BLOCK*, 10 N.Z.L.R. 677.

[N.Z., ACT OF 1885, s. 17 and ss. 55 and 67.]—Crown lands not alienated nor contracted to be alienated — *Mistake* — *Summons for correction—Bona fide transferee* — *Crown not bound—Road—Rights of Public.*—Land which has never been alienated, nor contracted to be alienated, from the Crown cannot be brought under the provisions of *The Land Transfer Act*. A land registrar has no jurisdiction to grant a certificate of title to such land, and a transferee of such land *bona fide* for value obtains no better title than the transferor. *If The Municipal*

Corporations Act divests such land from the Crown, and vests it as a road in the local corporation, the land, until the road is closed or disposed of by the corporation under its statutory powers, is still subject to an absolute right of user by the public, and sections 55 and 67 of *The Land Transfer Act* do not bar that right. *In re CARGILL*, 7 N.Z.L.R. 481. [Dissented from in *In re OKIRAE BLOCK*, 10 N.Z.L.R. 677, *supra*.]

ESCHEAT.

See BRINGING LANDS UNDER ACT.
In re BOURKE, 7 Q.L.J. 183. ATTORNEY-GENERAL v. HOGGAN, 3 V.L.R. (Eq.) 111.

ESTATE TAIL.

Bringing under Act

See BRINGING LANDS UNDER ACT.
Ex parte WILLIS, 12 S.C.R. (N.S.W.) 312.

[S.A.]-Estate tail—*Deed of assignment—Trustee—Statute De Donis—Fines and Recoveries (Imperial) Act—Estates Tail Act*, 1881—*Insolvent Act*, 1860.—S. was the tenant in tail of certain property under the Act, which he assigned to trustees for the benefit of his creditors. The trustees applied to the Court for an order for sale of the fee-simple of the said entailed land. Held (1) That the trustees could only sell a base fee determinable on death of debtor and failure of issue; (2) That the statute *De Donis* applies in South Australia; (3) That *The Fines and Recoveries Act* is not applicable to the province; (4) That *The Estates Tail Act*, 1881, is not retrospective. *In re SWINDEN*, 16 S.A.L.R. 7. (Full Court).

ESTOPPEL.

Of vendor from showing non-payment of purchase money after registration of transfer

See TRANSFER.

Tenancy by, of mortgagor—Mortgagee's right of distress

See MORTGAGE—*Powers and Remedies of Mortgagee*.

EVIDENCE.

•See BOUNDARIES.

See EJECTMENT.

Abandonment of right-of-way

See EASEMENT.

Adverse possession

See ADVERSE POSSESSION—*Evidence*.

Affidavits—On summons to show cause against cancellation of certificate

See CERTIFICATE OF TITLE—(A.) *Cancellation*.

Burden of proof

See CAVEAT AGAINST DEALINGS—*Withdrawal*.

Burden of proof of fraud

See FRAUD.

Burden of proof on trial of issues upon application to bring land under Act

See BRINGING LAND UNDER ACT—*Trial of issues*.

Certified copy of memorandum of mortgage

See INSTRUMENTS OF TITLE.

Conclusive evidence of certificate of title

See CERTIFICATE OF TITLE.

Criminal law

See CRIMINAL LAW.

Dedication of road

See EASEMENT.

Default by mortgagor, on transfer by mortgagee

See MORTGAGE.

See REGISTRAR, DUTIES OF.

Dispute as to boundaries

See BOUNDARIES.

Duty of Registrar to accept, on application to bring land under Act

See BRINGING LANDS UNDER ACT—

Duties of Registrar.

Estoppel

See MORTGAGE.

See TRANSFER.

Government plan and parish map rightly rejected on trial of issues

See BRINGING LANDS UNDER ACT.

SMITH v. NEILD, 10 N.S.W.L.R. (L.) 171.

Loss or damage, proof of

See REMEDIES FOR DEPRIVATION.

Power of executor to sell land—Right of trustee to discharge mortgage

See TRUSTS AND EQUITIES—*Recognition of trusts*.

Right-of-way, proof of existence or loss

See EASEMENT.

Statements in document of title

See INSTRUMENTS OF TITLE.

Sub-lease, proof of

See LEASE.

MUNRO & BAILLIEU v. ADAMS, 17 V.L.R. 703.

Summons referred to Full Court

See PRACTICE.

EVIDENCE.

[N.Z.]-Boundaries—*Absence of natural boundaries—Possession*.—Where parcels of land

are granted by the Crown having no natural boundaries, the original survey marks being gone, and where there is no great difference in admeasurement, a long occupation, acquiesced in by the adjoining owner, will be taken by the Court as convincing evidence that the lands occupied are the lands granted, notwithstanding that they cannot be made to tally with the plans on the grants. Next to natural boundaries, the highest regard is had to lines actually run, and corners actually marked, at the time of a grant, and, if the description is doubtful, parol evidence of the construction given to it by the parties is admissible, and will bind their successors in title. *Semble*, that even under *The Land Transfer Act*, possession should be the best evidence of title. *EQUITABLE BUILDING AND INVESTMENT Co. v. ROSS*, N.Z.L.R. 5 S.C. 229.

[S.A., ACT OF 1861.]—Certificate of title—*Rights-of-way*.—A certificate of title under *The Real Property Act*, 1861, is not evidence of the registered proprietor's title to rights-of-way over other lands endorsed thereon. *FORMBY v. CORPORATION OF ADELAIDE*, 14 S.A.L.R. 144. (Full Court). (See EASEMENT—Evidence).

[VICTORIA, ACT OF 1866.]—Certificate of title—*Conclusive effect of*.—The conclusive evidence of title afforded by production of the certificate of title may be nullified if the registered proprietor produces evidence showing that the certificate of title was improperly obtained. *MILLER v. MORSEY*, 2 V.R. (L.) 193, 2 A.J.R. 115.

[VICTORIA, ACT OF 1866, s. 47.]—Certificate of title—*Duplicate*.—The certificate of title which is to be conclusive evidence of title under s. 47, is the certificate of title retained by the Registrar, and bound up in the Register Book. The duplicate certificate of title held by the registered proprietor is only *prima facie* evidence. *WILKINSON v. BROWN*, 1 V.R. (L.) 86, 1 A.J.R. 88.

[VICTORIA, ACT OF 1890, s. 55.]—Duplicate instruments—*Production of duplicate in Register Book*.—*Semble*, that although, under s. 55 of *The Transfer of Land Act*, 1890, instruments presented for registration may be in duplicate, each part is to be treated as an original for all probative purposes. *ETTERSHANK v. THE QUEEN*, 4 A.J.R. 132. (Full Court).

[VICTORIA, ACT OF 1866.]—Endorsement on title—*Memorandum of transfer—Reference therein to certificate of title*.—The entry of the folio and volume of an instrument of transfer shows sufficient connection with the certificate issued thereon. *ETTERSHANK v. THE QUEEN*, 4 A.J.R. 132. (Full Court).

[N.S.W., ACTS OF 1862 AND 1878.]—Examination de bene esse.—*Quere*: Whether an order from the Full Court is necessary for the examination of a witness de bene esse in a real property issue? *In re O'BRIEN*, 2 N.S.W.L.R. 301.

[VICTORIA, ACT OF 1866, ss. 84 et seq.]—Mortgage—*Consideration*.—A mortgage under the Act, though subsequently discharged, is not sufficient proof of the exact amount alleged to have been paid as the consideration of the mortgage. *HAYES v. WILSON*, 6 A.L.T., 249.

[VICTORIA.]—Official Signature.—Evidence as to the signature of the Deputy Registrar-General by a person who had never seen him sign his name,

but who had seen it on many official documents known by him to be genuine, is admissible. *KOZMINSKY v. SCHURMANN*, 7 V.L.R. (L.) 474.

[VICTORIA.]—Official Signature.—*Signature of Deputy Registrar-General—Judicial notice*.—The Court will not take judicial notice of the signature of the Deputy Registrar-General under s. 154 of *The Statute of Evidence*, 1864. Therefore, a memorandum signed by the Deputy Registrar-General endorsed upon a stock mortgage that such mortgage has been filed, is not evidence of filing unless the signature be proved. *TEAGUE v. FARRELL*, 6 V.L.R. (L.) 480; 2 A.L.T. 98.

[N.S.W., ACTS OF 1862 AND 1877]—Onus of proof between applicant to bring land under the Act and caveator in possession.—Where an applicant to bring land under the Acts shows a complete documentary title, and that he has been in possession within twenty years before the commencement of the proceedings, the burden of proof to defeat his title is on the caveator in possession. *SOLLING v. BROUGHTON*, 1893 A.C. 556. And see cases under BRINGING LAND UNDER THE ACT—*Trial of Issues*.

[N.S.W., ACT OF 1862.]—Plan—As to the admission of a plan as evidence, see *SMITH v. NEILD*, 10 N.S.W.L.R. 171. *Supra sub*. BRINGING LAND UNDER THE ACT—*Trial of issues*, col. 38.

[VICTORIA, ACT OF 1866, s. 134.]—Plan—*Deposit of at Titles Office—Plan lost—Evidence of its contents—Action for recovery of land*.—In an action for the recovery of land, where the plaintiff's certificate of title refers to a plan of subdivision as being lodged in the Titles Office, that is evidence as against him that the plan was so lodged. Such plan of subdivision, comprising the allotments of the plaintiff and the defendant, is admissible in evidence to show that the corner of two streets forming the commencing point for both plaintiff's and defendant's measurements, ought not to be where it actually appears on the ground, but is not conclusive. On proof that such plan had been lost in the Titles Office, a copy of it on which the office had for some years acted was admitted as secondary evidence of the plan of subdivision for the same purpose. *KELLY v. GIRDLER*, 12 V.L.R., 851.

[VICTORIA, ACT OF 1866.]—Power of Attorney—*Registration of documents executed under—Evidence that power not revoked*.—Where the Registrar of Titles refused to register a transfer of certain land, the title to which depended on a deed purporting to have been executed under the power of attorney, on the ground that evidence must be given of the principal being alive at the date of the registration of the power: *Held*, that he was right. *In re WOODS*, 6 W.W. AND A'B. (L.) 233, N.C. 26. (Full Court.)

EXAMINATION DE BENE ESSE.

In real property issue—Practice

Quere, whether an order of the Full Court is necessary for the examination of a witness de bene esse in a Real Property issue? *In re O'BRIEN*, 2 N.S.W.L.R. 301.

EXCESS.

Of area of land sold by metes and bounds—Compensation for—Vendor and purchaser

See REMEDIES FOR DEPRIVATION.

EXECUTION.

Of instrument—Inquiry as to due execution

See REGISTRAR, DUTIES OF.

EXECUTION CREDITOR.

Misdescription of land in statement accompanying writ—Damages

See REMEDIES FOR DEPRIVATION.

EXECUTOR.

Land in name of—Registration of judgment against

See SALES BY SHERIFF.

Mortgagee of testator's land—Foreclosure—Executor who is also mortgagee of testator's land cannot obtain order for foreclosure

See MORTGAGE—Foreclosure.

Ex parte NATIONAL TRUSTEES, &C., Co. LTD., 19 A.L.T. 222.

Position of, as to lands of testator

See TRANSMISSION.

Transfer by—Liability of estate to debts

See TRANSFER.

See TRANSMISSION.

EXECUTORY AGREEMENTS.

See TRUSTS AND EQUITIES—Recognition of trusts.

FALSA DEMONSTRATIO.

See BOUNDARIES.

FALSE STATEMENT.

See CRIMINAL LAW.

FEES.

Assurance fund

See ASSURANCE FUND.

See TRANSMISSION.

For production of certificate of title by first mortgagee

See MORTGAGE—Powers of mortgagee.

FIERI FACIAS.

See SALES BY SHERIFF.

FIXTURES.

See MORTGAGE.

Annexed to soil by wrong doer—Purchaser

See FRAUD.

FORECLOSURE.

See MORTGAGE — Powers and remedies of mortgagee

FOREIGN COMPANY.

Registration of transfer to

See REGISTRAR, DUTIES OF.

FORFEITURE.

Of lease

See LEASE.

FORGED TRANSFER.

See REMEDIES FOR DEPRIVATION.

FORGERY.

See CRIMINAL LAW.

See FRAUD (D.).

FORM.

Document not in accordance with forms prescribed by the Act

See TRANSMISSION.

Of caveat

See CAVEAT AGAINST DEALINGS.

Of mortgage

See REGISTRAR, DUTIES OF

Ex parte ROXBURGH, 1 S.C.R. (Q.) 201.

Of transfer

See TRANSFER.

FRAUD.

See also CERTIFICATE OF TITLE.

See also REMEDIES FOR DEPRIVATION.

Application to bring lands under Act

See also BRINGING LANDS UNDER ACT.

BELL v. BECKMANN, 10 N.S.W.L.R. (Eq.) 251.

Certificate of title obtained by—Relief

See CERTIFICATE OF TITLE—(A.) Cancellation.

Crown grant obtained by

See CROWN GRANT.

Evidence—Burden of proof

See LENNEBERG v. SCHLEUSENER, B.C.R., 24th August, 1885.

False statement

See CRIMINAL LAW.

Jurisdiction of Court of Equity.

[S.A., Act of 1861.]—The Court of Equity has concurrent if not sole jurisdiction in cases of fraud arising out of *The Real Property Act*. *BRADY v. BRADY, 8 S.A.L.R. 219.*

FRAUD.

- A. DEFINITION.
- B. BRINGING LAND UNDER THE ACT.
- C. EVIDENCE.
- D. FORGED INSTRUMENTS.
- E. FRAUD UPON CREDITORS.
- F. INNOCENT PURCHASER.
- G. MISTAKE.
- H. NOTICE.

A. DEFINITION.

[VICTORIA, ACT OF 1866, ss. 49, 50]—Fraud, meaning of.—Molesworth J. gave as instance of fraud within the meaning of Act No. 301, collusion between proprietor and vendee to defeat an equitable interest, or means taken by the vendee to induce a person having equitable interests not to enforce his right or lodge a caveat. *ROBERTSON v. KEITH*, 1 V.R. (Eq.) 11, 14; 1 A.J.R. 14.

[VICTORIA, ACT OF 1866, ss. 49, 50]—Fraud, meaning of.—Sections 49 and 50 of the Act No. 301 protect a purchaser from encumbrances not created by himself, but he must perform a contract into which he has himself entered, and the Court will enforce the performance. *CUNNINGHAM v. GUNDRY*, 2 V.L.R. (Eq.) 197. (Full Court.)

[VICTORIA, ACT OF 1866, s. 50.]—Fraud, meaning of.—*The Transfer of Land Statute* (No. 301), s. 50, should be construed strictly, its exceptions liberally. Fraud, in that section, applies equally to the cases of fraud by a purchaser and by a vendor. *CHOMLEY v. FIREBRACE*, 5 V.L.R. (Eq.) 57. (Full Court.)

[VICTORIA, ACT OF 1866, ss. 49, 50]—Fraud, meaning of.—The word "fraud" in ss. 49 and 50 of *The Transfer of Land Statute* (No. 301) does not include fraud of the conveying party in acquiring title. *CULLEN v. THOMPSON*, 5 V.L.R. (Eq.) 147.

(VICTORIA, ACT OF 1890, ss. 74, 140.)—Fraud, meaning of.—*Protection of dealings with registered proprietor—Administrator registered as proprietor—Mortgage by administrator to secure own debt—Constructive fraud—Actual fraud—Leasehold under Victorian Act.*—"Fraud," in s. 74 of *The Land Transfer Act*, 1890 (No. 1149), which provides that the proprietor of land under that Act shall, "except in the case of fraud," hold the same subject to such encumbrances as are notified on the certificate of title, but absolutely free from all other encumbrances whatsoever, with certain exceptions therein mentioned, means moral turpitude—actual dishonest dealing—and does not include what is known as "constructive fraud." Where a person sells land to a widow, who happens also to be administratrix of her husband's intestate estate, and who gives, as security for a portion of the purchase money, a mortgage over a leasehold estate, under *The Transfer of Land Act*, 1890 (No. 1149), forming portion of the intestate's estate, of which she had become the registered proprietor, *held, per Williams and Hood JJ.* (*A'Beckett J. dissentiente*), that actual fraud should not be inferred, and that the mortgage could not be defeated by the next-of-kin of the intestate. *GREGORY v. ALGER*, 19 V.L.R. 565. (Full Court.)

B. BRINGING LAND UNDER THE ACT.

[S.A., REAL PROPERTY ACTS, 1857, 1858, 1860, AND 1861.]—Bringing land under Act—*Certi-*

cate of title—Cancellation—Fraud—Voluntary transfer.—In 1840 G., the owner in fee-simple of certain land, mortgaged the same to W. as trustee for F. to secure payment of £161 and interest. In 1842 G. paid £142 in reduction of the mortgage debt and obtained back his title deeds, but no reconveyance of the land. In 1855 G., having sold portion of the land to M., offered to sell for £250 the balance to A., who, however, on the advice of his solicitor S., a partner of C., declined to purchase on account of the outstanding legal estate. In September, 1856, C. bought from F. the whole of the land for £20, and obtained a conveyance of the same in fee-simple. In October, 1856, C. conveyed the land to S., who afterwards bought from M. the piece of land M. had formerly purchased from G. S. died in 1858, indebted to A. in the sum of £380, in satisfaction of which debt the devisees of S., one of whom was C., conveyed to him in 1859 the abovementioned land, C. informing him at the time that the title was a "good holding title." A. at once made application in the form in Schedule I. to the Act of 1858, to bring the land under the provisions of *The Real Property Act*, forwarding with his application an abstract of title, which if examined must have shown the Commissioners that A. was not entitled to the estate in the land which he claimed. The Lands Titles Commissioners, pursuant to A.'s application, issued to him a certificate of title under the provisions of the then Real Property Act. In 1861 G. brought ejectment against A. and obtained a verdict in his favour. In 1863 G., in consideration of a debt then due by him, and of a further advance, conveyed the land to his solicitors, having previously paid off the balance of the mortgage debt of £161 and interest to the assignees in insolvency of F. and obtained an order under the Trustee Act vesting in him the land, and C.'s solicitors afterwards sold and conveyed the same to the plaintiffs. A. died in 1866, and in 1876, on the usual application and declaration, the trustees under his will obtained a certificate of title to the land in their names and afterwards transferred the same to the defendants as devisees under the will of A. On suit to compel the delivery up and cancellation of the certificates—*Held*, (1) That under the above circumstances A. must be taken to have known of G.'s rights at the time he made the application to have the land brought under *The Real Property Act* of 1858; that the statement in his declaration in support of the application, that he was not aware that any person had any claim, estate, or interest in the land at law or in equity, was untrue to his knowledge, and material, and that on these grounds alone the certificate was obtained by fraud within the meaning of s. 40 of *The Real Property Act*, 1861; (2) That the knowledge of C. of the outstanding title of G. affected A. with notice of the same, so as to fix him with constructive fraud in making the above application; (3) That the fraud contemplated by s. 40 of *The Real Property Act*, 1861, is not necessarily moral fraud, but embraces fraud in its ordinary legal sense; (4) That certificates of title under the earlier Real Property Acts are subject to the exception contained in s. 40 of *The Real Property Act*, 1861, and liable, under that section, to be avoided if obtained by fraud; (5) That the protection extended by s. 114 of *The Real Property Act*, 1861, to transferees from the registered

proprietor of land under that Act applies to transferees for value only, and not to mere volunteers. *Briggs v. McEllister*, 14 S.A.L.R. 86. (Full Court.)

[S.A., Act of 1861.]—**Bringing land under the Act—Certificate of title—Parties.**—M., the eldest son of a deceased proprietor, fraudulently applied in the name of his father to have certain lands brought under the Act, stating *inter alia* in his declaration that he was not aware of any mortgage other than set forth, and stated as follows: "That K. lent to me the sum of £250 on the security of the said piece of land, and that I have agreed to execute and register a mortgage for the said sum to the said K., or to whom he may desire." A certificate of title was accordingly issued in the name of the deceased owner, and, on the date when the same was issued, M. executed, in the name of the deceased, a memorandum of mortgage to a party other than K. to secure the sum of £250 and interest—presumably the same sum expressed in the application to have been advanced by K. On a bill filed to set aside the certificate of title and mortgage: *Held*, that the Lands Title Commissioners had no power, under the circumstances, to issue the certificate of title in the name of a dead man, and that the certificate of title and, consequently, the mortgage were nullities; and that neither the heir-at-law, nor the executors of his will, the Registrar-General nor the Commissioners were necessary parties to the suit. *Brady v. Brady*, 8 S.A.L.R. 219.

[VICTORIA, ACT OF 1866, s. 105.]—**Bringing land under the Act—Person not the owner bringing land under the Act in his own name—Ejectment—Cancellation of certificate of title—Execution of transfer to rightful owner—Expenses of bringing land under the Act—Mesne profits.**—Where the owner of land had been deprived of it by the defendant having brought it under *The Transfer of Land Statute*, and having obtained a certificate of title in his own name by means of false and fraudulent declarations, the Court would not order the Registrar of Titles to cancel such certificate, he not having been made a party to the action; but it ordered the defendant to give up possession of the land, with *mesne profits* for the time he had been in occupation; also to deliver up the duplicate certificate of title, and to execute a transfer to the plaintiff. The defendant was not allowed the expense of bringing the land under the Act. *Ogle v. Aedy*, 13 V.L.R. 461.

[N.Z., Act of 1885, s. 56.]—**Bringing land under the Act—Registration of void conveyance from Natives—Registered proprietors declared trustees—Re-transfer ordered.**—The registration under the Act of a void conveyance from Natives by the parties to whom it purports to convey is a wrongful obtaining of what is equivalent to the legal estate, and such parties are trustees for the Natives, and the Court will give effect to the trust, and direct transfer to them. *Matthews v. Paraone*, 7 N.Z.L.R. 528. (Court of Appeal.)

[S.A., Act of 1861, s. 39.]—**Bringing land under the Act—Unregistered deed.—Equitable right.**—Although an unregistered deed is not effectual to pass any interest in land under s. 39 of the Act of 1861, yet it is effectual to pass an equitable right to set aside a certificate of title relating thereto, which has been obtained by

fraud. (On appeal, affirming the decision of the Supreme Court). *McEllister v. Biggs*, 8 App. Cas. 314.

C. EVIDENCE.

[Q., Act of 1861, s. 44.]—**Burden of proof of fraud.**—In an action by the registered proprietor for recovery of possession of land, the defendant alleged fraud. The plaintiff produced the certificate of title free from encumbrance. *Held*, that the onus of proving fraud lay on the defendant, and that, unless fraud was proved, the plaintiff was entitled to possession against all the world. *Lenneberg v. Schleusener*, B.C.R., 24th August, 1885.

D. FORGED INSTRUMENTS.

[N.Z., Act of 1885, s. 66.]—**Forged conveyance—Fraud—Innocent purchaser obtaining title under the Act.**—Where a signature to a deed of conveyance is, without the knowledge of the purchaser, a forgery, and the land thereby conveyed is brought under *The Land Transfer Act*, the purchaser's title to the land is unimpeachable. *Coleman & Clarke v. Riria Puwhanga*, N.Z.L.R. 4 S.C. 230.

[N.Z., Act of 1885, s. 68.]—**Forged Mortgage—Registration—Endorsement obtained by fraud.**—A person stole a provisional certificate under *The Land Transfer Act* and forged the name of the owner of the land to a memorandum of mortgage in favour of a person who in good faith, advanced money on the supposed security. The memorandum of mortgage was duly registered. A summons was issued on behalf of the District Land Registrar, calling on the mortgagee to deliver his documents of title up to have the registration memoranda cancelled. *Held*, that the forged memorandum conferred no title, and the registration thereof must be vacated. *In re Land Transfer Act, ex parte Davy*, 6 N.Z.L.R. 760. (Court of Appeal.)

[N.Z., Act of 1885, ss. 35, 36, 39.]—**Forgery of Transfer.**—A person employed an agent to procure a transfer of a memorandum of mortgage under *The Land Transfer Act*. The agent procured a transfer of the mortgage to be executed by one joint mortgagee and forged the signature of the other. He then, on behalf of the transferee, procured him to be registered as mortgagee. The transferee paid the consideration money to the agent, who misappropriated it. *Held*, that the memorandum of registration was procured by fraud, and an order was made that it be delivered up to be cancelled. *Ex parte Batham*, 6 N.Z.L.R. 342. (Court of Appeal.)

[VICTORIA, ACT OF 1866.]—**Forged Transfer—Fictitious transferee—Forged mortgage—Effect of registration.**—The Victorian Transfer of Land Statute protects those who derive a registered title *bonâ fide* and for value from a registered owner. Accordingly they need not investigate the title of such owner, for they are not affected by its infirmities. But they must ascertain at their own peril his existence and identity, the authority of any agent to act for him, and the validity of the deed under which they claim. The name of a registered owner having been removed in favour of a fictitious and non-existing transferee as the result of a forged transfer, a mortgage purporting to have been executed by

such transferee was subsequently put upon the register by *bonâ-fide* mortgagees. In a suit by the true owner against the Registrar, the mortgagees, and the perpetrator of the fraud—*Held*, (a) that the plaintiff's name must be restored to the register; (b) that the mortgage was invalid and did not in favour of the mortgagees constitute an encumbrance on the plaintiff's title, though under the Act it would have that effect in favour of a *bonâ-fide* registered assignee thereof. *GIBBS v. MESSER*, 1891 A.C. 248.

[VICTORIA, ACT OF 1866]—Fraud—*Forged transfer—Innocent purchaser*—A registered proprietor under the Act, being a purchaser for value and without notice of the forgery, acquires by virtue of the Act an indefeasible title to the estate or interest of which he is registered, even although such registration may have been effected by means of a forged instrument. *O'CONNOR v. O'CONNOR*, 9 A.L.T. 117.

[Q., ACT OF 1861, ss. 123, 126]—*Forged transfer—Registration of transferee—Bonâ fide purchaser for value from transferee—The English Registry Acts contrasted.*—Under *The Real Property Act* of 1861 a *bonâ fide* purchaser for value without notice from a proprietor registered on a forged transfer obtains on registration the legal estate. *BAILEY v. CRIBB*, 2 Q.L.J. 42.

E. FRAUD UPON CREDITORS.

[N.S.W., ACT OF 1862.]—*Fraudulent settlement—Of land under the Act, within 13 Eliz., c. 5—Settlement set aside.*

See *LLOYD v. BLUMENTHAL*, 5 N.S.W.L.R. (Eq.) 99.

[N.Z., ACT OF 1870, ss. 42, 142.]—*Fraud upon creditors—Purchase in wife's name—Certificate of title—Setting aside.*—H. bought a piece of land and directed the vendor to transfer it to his wife, in whose name a certificate of title accordingly issued. The wife died, leaving a son. The husband filed a declaration of insolvency under *The Debtors and Creditors Act*, 1876, within three years from the date of the transfer. In a suit by the creditors' trustee to have the certificate of title declared void: *Held*, that although the certificate of title was bad as against the plaintiff as trustee, it was good as between the bankrupt and the heir-at-law. The decree was that after satisfaction of the claims under the bankruptcy and the payment of all costs, the residue of the land, or the proceeds therefrom, belonged to the heir-at-law. *HALL v. HALL*, 2 N.Z.J.R. (N.S.) S.C. 259.

[VICTORIA, ACT OF 1866, s. 63.]—*Transfer by father to his children—Landed estate subject to a mortgage—Bona fides—Valuable consideration—The Land Tax Act, 1877 (No. 575), ss. 4, 35.*—A father of a family, with a view to providing for his children, bought for them a station, consisting of freehold land, under *The Transfer of Land Statute*, comprising a landed estate within the meaning of *The Land Tax Act*, 1877, and stock thereon, the land being subject to a mortgage under *The Transfer of Land Statute*. He requested the vendor to transfer direct to the children, but as some of them were minors, he refused to do so, and the father took

the transfer to himself, and gave his promissory-notes for the purchase money, extending over a period of ten years, except a small amount which he paid in cash. He also gave a second mortgage over the land to secure the payment of the promissory-notes. Forthwith he transferred the lands, except a small portion which he retained for himself, to his children, in such portions as that each was under the taxable amount, and the children were registered as the absolute proprietors in fee-simple of those portions. Thereupon the Registrar placed the father's name on the Land Tax Register as owner of the whole of the lands. The stock was not transferred to the children but ran over all the lands. There was an understanding between the father and his children, that a fund was to be raised out of the produce of the station and stock to meet the bills given by the father, the intention being that the station should pay for itself in the ten years. The Registrar, though requested to do so, refused to remove the father's name from the Land Tax Register in respect of such transfer. Upon an order *nisi* to remove his name in respect of all the lands except the portion he had retained for himself: *Held*, that the liability under *The Transfer of Land Statute* (No. 301), s. 63, of the transferees to pay the mortgage debt did not form a valuable consideration for the transfers to the children, and that such a dealing by a father of a family in favour of his children was not a transfer *bonâ fide* for valuable consideration within the meaning of s. 4 of *The Land Tax Act*, 1877, No. 575. *PRICE v. JENKINS*, 5 Ch.D. 619, distinguished. *Ex parte FINLAY*, 10 V.L.R. (Eq.) 68. (Full Court.)

[VICTORIA, ACT OF 1866, ss. 49, 139.]—*Void settlement under 27 Eliz., c. 4—Registration of collusive settlement.*—Where a settler agreed to sell the settled land to M., and the deed of purchase contained false recitals as to the purchase money, although there was some money due to M. at the time of purchase, the Court, while holding that the settlement was void as against M.'s *bonâ-fide* debt, upheld the Registrar's refusal to register the transfer under the statute to M., refusing to make M. proprietor out of regard to the provisions of s. 139 of Act No. 301, but directed the trustee of the settlement to execute a mortgage to M. under the Act. *MOSS v. WILLIAMSON*, 3 V.L.R. (Eq.) 221.

[VICTORIA, ACT OF 1890, ss. 47, 50]—*Voluntary purchase in name of infant son.*—Observations upon a voluntary purchase of land under the Act No. 301 by a father in the name of an infant son. *BANK OF VICTORIA v. RAWLING*, 6 V.L.R. (Eq.) 111; 2 A.L.T. 9.

[N.S.W.]—*Voluntary Settlement—Married Woman—Bankruptcy Act, s. 55—Issue of certificate.*—In the case of a voluntary settlement the Registrar-General is not entitled to make a notification on the certificate of title that the transfer is made subject to the provisions of s. 55 of *The Bankruptcy Act*. *Ex parte CAMERON*, 15 N.S.W.L.R. (L.) 139. (Full Court.)

F. INNOCENT PURCHASER.

[N.Z., ACT OF 1885, s. 189.]—*Innocent purchaser—Chattels of third person annexed to the soil by wrongdoer—Subsequent sale of freehold—Protection of purchaser under s.*

189 of *The Land Transfer Act*, 1885. — The purchaser of land under the provisions of *The Land Transfer Act*, 1885, on which chattels of a third person have been wrongly fixed is, in the absence of fraud, protected by s. 189 of that Act; and the mere knowledge that a claim has been made which might or might not prove valid, but which the claimant has taken no steps to make good, is not fraud within the meaning of that section. *NICHOLSON v. BANK OF NEW ZEALAND*, 12 N.Z.L.R. 428.

[VICTORIA.]—Innocent purchaser—*Fraud of vendor*.—Fraud in a vendor does not vitiate title of innocent purchaser. *CULLEN v. THOMPSON*, 5 V.L.R. (Eq.) 147.

[S.A.]—Innocent purchasers or mortgagees for valuable consideration—*Land grant obtained by fraud*.—*Quere*, whether a land grant obtained by fraud is not good as between the Crown and innocent purchasers or mortgagees for valuable consideration? *ATTORNEY-GENERAL v. O'SULLIVAN*, 12 S.A.L.R. 90.

[N.Z., Act of 1885, s. 56.]—Innocent purchaser—*Principal and agent*—*Authority of agent*—*Attorney to transfer property*—*Common agent*—*Common solicitor*—*Payment, what amounts to*—*Purchase for value*.—The plaintiffs appointed H. and Co., solicitors, of Christchurch, New Zealand, attorneys for them to get in certain moneys invested on mortgage in New Zealand and remit them to the plaintiffs in England, and for that purpose to exercise powers of sale and to execute transfers and releases. H. and Co. accordingly sold to one A. the lands comprised in a mortgage from one D. to the plaintiffs, registered under *The Land Transfer Act*. H. and Co. were also attorneys and solicitors for the defendant, who was also resident in England, and had shortly before entrusted them with a considerable sum for investment, and they agreed on behalf of the defendant to advance to A. £1100, part of the purchase money payable to the plaintiffs, on the security of a mortgage to be given by A. to the defendant over the property being purchased. They acted as solicitors in the matter for A., as well as for the plaintiffs and defendant. As attorneys for the plaintiffs, they executed a transfer to A., who paid them the balance of the purchase money over and above the £1100, and executed a mortgage in favour of the defendant to secure the £1100. H. and Co. thereupon credited the plaintiffs in their books with the £1100, and debited the defendant with the same amount, but no moneys passed at the time in respect of the £1100. The moneys which had been entrusted to H. and Co. by the defendant had, in fact, at the time of their receipt by H. and Co. and previously to the transaction with the plaintiffs and A., been paid by H. and Co. into their banking account, which was then and continued afterwards heavily overdrawn until their bankruptcy, which took place some years afterwards. H. and Co. concealed the sale to A. and mortgage to the defendant from the plaintiffs, rendering them accounts which treated the original mortgage from D. to the plaintiffs as subsisting, and remitting them amounts as for interest under that mortgage; and the plaintiffs did not become aware of the true state of things until the bankruptcy of H. and Co. *Held* by the Court of Appeal (*reversing* Denniston J.), that the plaintiffs were entitled to a transfer from the

defendant of the mortgage from A. to the defendant, the defendant not having paid the consideration money for it to the plaintiffs, who were entitled to receive it under the irrevocable order from A. implied from the nature of the transaction. *Held* (*per* Denniston J. in the Supreme Court and *per* Richmond J. in the Court of Appeal), that the title of the purchaser A. was unimpeachable, he being entitled to assume that the vendors had received the money from the new mortgagees before parting with the transfer. *CARDEN v. GILLET*, 13 N.Z.L.R. 457. (Full Court.) And see other cases *infra* sub REMEDIES FOR DEPRIVATION—*Bona fide purchaser*.

G. MISTAKE. (See also ERROR.)

[N.Z., Act of 1870, s. 129.]—*Mistake—Taking advantage of*.—A. agreed to sell to B. and C. separate parcels of land, held under the provisions of *The Land Transfer Act*. By an innocent mistake of all the parties the land agreed to be sold to B. was transferred to C., and *vice versa*, and certificates of title were issued accordingly. Upon the mistake being discovered C. took possession of the land contained in his certificate of title, whereupon B. brought an action claiming that C. might be decreed to execute a transfer to rectify the mistake. *Held*, (1) That this was a case coming within the enacting portion of s. 129 of the Act of 1870, and therefore an action could not be maintained; (2) That the fact that C. kept possession of the land erroneously transferred to him after the discovery of the mistake did not amount to fraud within s. 129 (4); (3) That as the action came within s. 129, the general equitable jurisdiction of the Court could not be invoked for relief. *JONAS v. JONES*, N.Z.L.R. 2 S.C. 15.

H. NOTICE.

[VICTORIA, Act of 1866, ss. 48, 50.]—*Actual or constructive notice*.—S. 50 of *The Transfer of Land Statute* (No. 301) protects from constructive notice, but not from actual notice, of fraud. *COLONIAL BANK OF AUSTRALASIA v. PIER*, 6 V.L.R. (Eq.) 186.

[N.Z., Act of 1870, ss. 119, 129]—*Actual or constructive notice—Breach of trust—Negligence—Duty to inquire—Bona fides—Dealing with proprietor registered subsequently to agreement but before completion—Consideration passing before registration—Bona fide transferee for value—Knowledge of solicitor*.—The plaintiff's father died in 1875, leaving a will by which he devised and bequeathed all his property to a trustee in trust to pay the income to his wife during her widowhood, and after her decease or remarriage in trust for all his children. In 1876 the testator's widow married the defendant E. In 1877 the trustee named in the will was on his own petition discharged from the trusts by the Supreme Court, and E. appointed in his stead. In February, 1883, the defendant B., at the request of E. and Mrs. E., on the security of the certificate of title of land at G., deposited with him at the time, paid a sum of £27 in discharge of a private debt of E. B. knew at the time that the land at G. was part of the property left by plaintiff's father, and that E. was trustee, but was not aware of the terms of the will and made no inquiries. In August, 1883, B., at the request of E. and Mrs. E., and on condition that they should transfer to him land at W., also

forming part of the trust estate, paid a sum of £261 in discharge of another private liability of E. B. was again aware that the land was trust property, but ignorant of the terms of the trust, and made no inquiries. B., having paid the £261, was referred to A., a solicitor, for the certificate of title of the land at W. The certificates of title—both that of the land at G. and that of the land at W.—were then still in the name of the testator, but A. had in his hands applications by E. to be registered as proprietor of both, signed by E. in January, 1883. B. informed A. of the agreement between himself and E. and Mrs. E., and instructed him to proceed with the registration of E. as proprietor of the land at W., so that E. might transfer to him. A. was aware of the terms of the trust, but did not inform B. of them. E. having been registered as proprietor of the land at W., executed in April, 1884, a transfer of it to B., prepared by another solicitor acting for B., who also got it registered. In September, 1883, B. sent A. the certificate of title of the land at G., which he had had since February, 1883, asking A. to get the registration of E. as proprietor of the land also completed. In April, 1884, A. returned B. this certificate of title with E. registered. In August, 1885, B., with the knowledge of and without objection by Mrs. E., got E. to execute a mortgage to him of the land at G. to secure £90, the balance then owing to him by E. on account of the above transactions. The mortgage was prepared by the solicitor acting for B., who had prepared the transfer and was registered by him. B. had not then any further knowledge of the trusts of the will. In 1887 B. foreclosed his mortgage and became registered proprietor of the land at G. In a suit by the plaintiff to have a new trustee of the will of his father appointed and for a decree that B. should retransfer the lands at G. and W. to such trustee free from encumbrance (Denniston J. having given judgment for the defendant): *Held* on appeal (*per* Prendergast C.J. and Edwards J.), that the nature of the transactions themselves being such as to give B. notice that they must necessarily or presumably involve a breach of trust, he was not protected by s. 119 of *The Land Transfer Act*, 1870; and that it was immaterial that B. believed that E. had power to deal with the land with the consent of Mrs. E., as he had no reasonable ground for so believing. *Per* Prendergast C.J.: That, at least, the onus was thrown upon B. to show that he was not guilty of fraud but dealing honestly though negligently, and that he had not discharged that onus. *Per* Edwards J.: That A. was acting as B.'s solicitor or agent in procuring E. to be registered as proprietor, and that B. was affected by A.'s knowledge that a breach of trust was being committed; that the contracts with E. for security having been entered into when E. was not the registered proprietor, were not protected by s. 119, and that no fresh consideration having been given at the time when the documents sought to be impeached were executed, B. was not a *bona fide* transferee for value under s. 129 (4) of the Act of 1870. *Held* (*per* Williams and Conolly J.J.), that the term fraud in s. 119 means actual fraud as distinguished from constructive or equitable fraud; that B., having acted in good faith, was protected by that section even though grossly negligent; that he was so protected notwithstanding that

the debt had been incurred and the agreement to secure given before E. was registered as proprietor; and that A. had not acted as B.'s solicitor, and his knowledge could not be imputed to B. The Court being evenly divided, the appeal was dismissed. *SMITH v. ESSERY AND BROWN*, 9 N.Z.L.R. 449. (Court of Appeal.)

[VICTORIA, ACT OF 1866 (No. 301), ss. 49, 50].—*Constructive Notice—Fraud in acquiring certificate—Adverse possession—Tenant—Mortgagor and mortgagee.*—The word "fraud" in ss. 49 and 50 of *The Transfer of Land Statute* (No. 301) does not include fraud of the conveying party in acquiring title. *CHOMLEY v. FIREBRACE* [5 V.L.R. (Eq.) 57] distinguished. *Semble*, the protection afforded by s. 49 of *The Transfer of Land Statute* (No. 301) to a tenant does not extend to protect the title of the landlord. A., a registered proprietor of land under *The Transfer of Land Statute*, borrowed money from B., and was induced by him to sign a document which he supposed to be a security, but which was a transfer by him to B. of the land. B. had himself registered as proprietor and mortgaged the premises to C. The premises were throughout in the occupation of a weekly tenant of A., who paid rent to him. Upon the discovery of B.'s fraud, A. filed his bill against B. and C. for redemption. *Held*, that but for *The Transfer of Land Statute* (No. 301), s. 50, C. could, by the tenancy, have been affected with constructive notice of A.'s rights, but that that section protected him, and that the mortgage to C. was good as against A.; and decree for redemption made upon payment by A. or B., and if by A. then B. ordered to repay him. *CULLEN v. THOMPSON*, 5 V.L.R. (Eq.) 147.

[VICTORIA, ACT OF 1866 (No. 301), s. 50].—*Constructive notice—Solicitor and client—Breach of trust.*—A., a solicitor, was the survivor of two trustees of a settlement under which they had power to invest and to vary investments with the consent of the tenant for life, and the tenant for life had power to appoint new trustees, which was never exercised. A. was also attorney under power of the defendants, trustees, to invest moneys. He invested moneys of the settlement trust in his own name upon mortgages, one only of which was under *The Transfer of Land Statute*, and paid the income to the tenant for life, rendering signed accounts referring to them. Shortly after, being indebted to the defendants, he, without the consent of the tenant for life, drew and executed transfers of the mortgages to them, untruly reciting receipt of the consideration moneys. Two days after he killed himself, dying in insolvent circumstances. Upon bill by new trustees of the settlement against the defendants, seeking a retransfer of the mortgages: *Held*, on appeal (*affirming* the decision of Molesworth J.) that as to the mortgages under the old law, the defendants should be deemed to have had notice of A.'s breach of trust, and should retransfer the mortgages to the plaintiffs; and (*reversing* the decision of Molesworth J.) that the same principle applied to the mortgage under *The Transfer of Land Statute*. The doctrine of constructive notice is not affected by *The Transfer of Land Statute* (No. 301), s. 50, as protecting a purchaser. *CHOMLEY v. FIREBRACE*, 5 V.L.R. (Eq.) 57. (Full Court.)

[VICTORIA, ACT OF 1866, s. 50].—*Notice—Dealings with person entitled to be but not*

actually registered as proprietor.—The manager of a mining company procured the sale of its property under a fraudulent judgment and became the purchaser. Part of the property consisted of a lease under *The Transfer of Land Statute*, which was transferred to him and by him to a purchaser, both transfers being registered on the same day. On bill to set aside the sale and restrain dealings with the lease by the second purchaser, an injunction was granted, it appearing that the second purchaser had notice of the fraud of the first. Observations on the words "except in the case of fraud," in s. 50 of *The Transfer of Land Statute*, and as to dealings with a person entitled to be but not being registered as proprietor. The immense power which *The Transfer of Land Statute* gives to a proprietor of completely barring clear equities presents a reason for Courts of Equity readily interfering by injunction. *DAVIS v. WEKEY*, 1 V.R. (Eq.) 1; 3 A.J.R. 1.

[VICTORIA, ACT OF 1866, s. 50.]—Notice—*Meaning of "fraud."*—In 1871 a person took possession of a definite area of land which he had then purchased from the registered proprietor, and cleared it of timber. He lived near the land, but did not further use it or do anything with it until 1884, when he built a store upon it, fenced it, and went to live upon it. He did not ask for a title till 1877, when the executors of the registered proprietor, by mistake of the Titles Office, transferred to him a block of land at the S.W. corner of the portion, he having actually bought the N.W. corner. Meanwhile, several transfers of the portion, less the S.W. corner block, were made, when the proprietor, being about to sell, discovered the error, endeavoured to take advantage of the mistake, and transferred to speculators whatever interest he possessed. These speculators obtained a certificate of title to the land, and then brought an action to recover the N.W. corner from the original purchaser, upon whose rights there had been no intrusion since he bought in 1871. *Held*, that the endeavour by the registered proprietor and the purchasers from him to take advantage of the mistake, though it showed a low moral perception on their part, was not fraud within the meaning of s. 50, but that defendant was entitled to judgment under s. 49 (*proviso*) as having been in adverse possession since 1871—*i.e.*, more than 15 years. *LAKE v. JONES*, 15 V.L.R. 728, 11 A.L.T. 72.

[N.Z., ACT OF 1870, s. 119.]—Notice of breach of trust—*Company—Fraud of agent.*—Where a person has notice not only of the existence of a trust, but also of the nature of that trust, and takes a mortgage of the trustees which is a fraud upon the trust, he is a party to the fraud, and is not protected by s. 119 of *The Land Transfer Act*, 1870. Where a person accepts from A. a transfer of property belonging to B., with which A., to the knowledge of the purchaser, has no right to deal, such a transaction is an actual fraud, and is not protected. A company cannot retain a benefit obtained through the fraud of its agent. B. and M. were trustees under the will of V., whereby they were directed to mortgage certain land for certain purposes. They accordingly mortgaged to the N.M. & A. Co. in pursuance of the trust. Afterwards A. V. and J. V. (persons having a residuary interest under the will), being indebted to the National Bank, B. and M. guaranteed the payment of the debt, and after-

wards gave the Bank a second mortgage to secure the overdraft to A. V. and J. V. The same person was manager of both mortgage company and bank, and at the time of the second mortgage knew of the existence and nature of the trusts under which the land was held, and, consequently, that the giving of the mortgage was a breach of trust on the part of B. and M. *Held*, that this was a fraud, and was not protected by the 119th section of the Act of 1870, and was invalid as against the beneficiaries under the will of V. *NATIONAL BANK v. NATIONAL MORTGAGE AND AGENCY CO.*, (VINCENT, CLAIMANT), N.Z.L.R. 3 S.C. 257.

[N.Z., ACT OF 1885, ss. 56, 57.]—Notice of trust—*Land held upon trust—Administratrix of trustee obtaining transmission in her own name.*—B. bought land under the Act and entered into possession, taking out his title in the name of C. C. died, and his wife, with full knowledge of the facts, obtained transmission of the land to herself as administratrix, and brought an action against B. to recover possession of the land and mesne profits. *Held*, that the administratrix held the land subject to the trusts upon which the deceased had held it; and *held*, further, that her conduct amounted to fraud, and that her registration as proprietor was not within the protection of ss. 55 and 56 of the Act. *KISSICK v. BLACK*, 10 N.Z.L.R. 519.

[N.S.W., ACT OF 1862, s. 111.]—Notice of trust—Purchase from registered owner.—Where a man purchases from the registered owner of land under *The Real Property Act*, it is necessary, in order to prevent him claiming the benefit of s. 111 of *The Real Property Act*, to prove something similar to collusion or actual fraud in which he participates. *COOKE v. UNION BANK*, 14 N.S.W.L.R. (Eq.) 280.

[N.S.W., 7 Vic., No. 16, ss. 11, 22; 22 Vic., No. 1, s. 18.]—Notice of prior unregistered interests—*Registered mortgage.*—A. sold certain lots of an estate by auction to B., and subsequently mortgaged the whole estate to C., who knew that certain unspecified portions of the estate had been sold. *Held*, that C. gained no priority from registration, but took subject to B.'s purchase. *SYDNEY AND SUBURBAN MUTUAL BUILDING, LAND, AND INVESTMENT ASSOCIATION v. LYONS*, 1894 A.C. 260.

[N.Z.]—Notice of unregistered interest.—It is fraud for a purchaser from the registered proprietor with notice of an unregistered lease to seek to deprive the lessee of his rights. *MERRIE v. M'KAY*, 16 N.Z.L.R. 124.

[N.Z., ACT OF 1870, ss. 46, 119.]—Notice of unregistered interest.—When a man agrees to sell land to another, and receives payment of the purchase money and the purchaser dies, it is a fraud in the vendor to buy back the land from the purchaser's widow without inquiring whether the purchaser left any children or whether the widow had any right to dispose of his interest. It is a fraud within the meaning of *The Land Transfer Act*, 1870, to bring the land so bought under the provisions of the Act with a knowledge of these facts. Fraud under s. 46 includes everything comprehended under that term in Courts of Equity. *Per Gillies J.*: No probate need be taken out of a will relating solely to land, and the devisee can deal directly with the land. *SAUNDERS v. CABOT*, N.Z.L.R. 4 C.A. 19.

[S.A., Act of 1861, s. 134.]-Notice of unregistered interest—*Adverse possession—Bringing land under Act.*—F. T. and E. T., being owners in fee-simple of land not under *The Real Property Act*, on 20th March, 1882, by an agreement in writing, let the land to F. for five years from 25th March following. At the time of the agreement F. was in occupation under a lease prior in date to the agreement, and after the agreement still remained in such occupation. On 12th May, 1882, the owners sold the land by auction to C. M. and A. In the advertisement printed in the newspapers announcing the sale, and distributed during the auction, and also in the conditions of sale signed by M. as one of the purchasers, it was stated that the land was sold subject to a certain lease, of which the terms were mentioned. The purchase-money was paid, and the vendors, at the request of the purchasers, applied to bring the land under *The Real Property Act*, and to have the certificate of title issued to the purchasers. The application was prepared and certified as correct by L., a licensed land broker, who was acting as agent in the matter for the vendors. The application was signed by E.T., and by L. as attorney for F. T. It made no mention of F.'s agreement for lease, and contained a declaration by applicants that they were not aware of any mortgage, encumbrance, or claim affecting the land, or that any person had any claim, estate, or interest therein, and that the land was then occupied by F., and that there were no deeds or instruments of title affecting the land in their possession or under their control other than those enumerated in the schedule to the application. F.'s agreement was not mentioned in the schedule. L. was aware of the agreement for lease, and had a counterpart thereof in his possession when the declaration was made. A certificate of title was issued to C. M. and A. on 8th September, 1882, containing no reference to F.'s agreement. On 1st July, 1882, F. paid a quarter's rent, due in June, to M. On September 14th, 1882, C. M. and A. transferred the land for value to I., A. S., and B., who, on the same day, mortgaged the land to S. S. acted as agent for the purchasers in connection with the transfer. I. and S. knew nothing of F.'s agreement before the purchase. B. N. (one of the defendants), knowing of F.'s agreement, and having been told by I. that he was unable to effect a sale on account of it, paid off the mortgage to S. on 5th December, 1882, and took a mortgage from I., A. S., and B. (the other defendants). The transfer and mortgage respectively contained no reference to F.'s agreement. F., who had remained in occupation of the land, brought an action against the defendants (I., A., B., and B. N.) for an injunction or order restraining dealings by them with the land, unless subject to his agreement. On the trial (before Boucaut J.) his Honor made a decree in favor of the plaintiff, declaring the original certificate of title and the second certificate of title fraudulent and void as against F., and that B. N.'s mortgage was subject to F.'s agreement. On appeal by the defendant, B. N.: *Held (per curiam)* (1.) That the words "adversely in actual occupation" in s. 134 of *The Real Property Act*, 1861, mean adversely to the certificate of title; (2.) That F. was in actual occupation adversely to the certificate of title at the times of the issue of the first and second certificates respectively,

and was rightfully entitled to the land, and that each certificate was therefore void as against F., under s. 134. *Per Boucaut J.*: (a) That it was fraud on the part of E. T. and F. T., and of C. M. and A., to obtain a clean certificate of title, and on the part of C. M. and A. to execute a transfer of the land without mentioning F.'s interest; (b) That I. had express notice of this fraud, and participated in it so far as the purchase by himself and his co-purchasers were concerned; (c) That although C. M. and A. had not the actual fraudulent design to deprive F. of his property, I. had such design; (d) That s. 40 of *The Real Property Act* of 1861 has no operation wherever there is fraud; (e) That I. was protected by s. 114 of *The Real Property Act* only as against the knowledge that F.'s interest was in existence, and was not protected against his knowledge of participation in the fraud; (g) That B. N., knowing that the land was brought under the Act by a false and fraudulent declaration, and knowing sufficient of I.'s fraud to make him a participator in it, was not a mortgagee *bonâ fide*, but a mortgagee *mala fide*, and was therefore not protected by s. 126. *FRANKLIN v. IND*, 17 S.A.L.R. 133. (Full Court.)

[N.Z., Act of 1885.]-Notice of unregistered interest—*Agreement by mortgagor under Land Transfer Act—Sale by mortgagee subject to agreement—Repudiation by purchasers—Fraud.*—Where a valid contract to grant a lease for a term of years has been created subsequently to a mortgage and without the mortgagee's consent, but the mortgagee in the exercise of his power of sale expressly sells subject to such contract, it is a moral fraud in the purchaser to repudiate the contract, and *The Land Transfer Act* will not protect him. Facts and circumstances which under the old system tend to show the creation of a new tenancy between the tenant and the mortgagee, under the land transfer system tend to show a recognition of an existing tenancy under the mortgagor. *THOMSON AND CHIEF v. FINLAY*, N.Z.L.R. 5 S.C. 203.

Notice of unregistered interest—*Registration by purchaser with notice of prior purchaser's title.*—A purchaser with distinct notice of the title of a prior purchaser cannot in Equity gain priority by registration. *VOCKENSOHN v. ZEVEN*, 3 W.W. AND A'B. (Eq.) 11, 122. (Full Court.)

[N.Z., Act of 1885, s. 189.]-Notice of unregistered interest—*Suspicion of fraud—Duty of purchaser to inquire—Solicitor acting under a power of attorney—Fraud of, imputed to client.*—Although under s. 189 of *The Land Transfer Act*, 1885, a purchaser from a registered proprietor is not affected by knowledge of the mere existence of a trust or unregistered interest, he is affected by knowledge that the trust is being broken, or that the owner of the unregistered interest is being improperly deprived of it by the transfer under which the purchaser himself is taking. The purchaser's action must be judged by considering what, with the knowledge he possessed, it was reasonable that he should believe respecting the good faith of the transaction. Where the circumstances are such as should raise in his mind a strong suspicion that the transaction in which he is engaged is a fraud on the right of another, he is bound to go no further in it without full inquiry. To omit such inquiry is a want of honest dealing, and he will not be entitled to

shelter himself under s. 189. Where a solicitor acts for a client under a power of attorney, the knowledge of the solicitor is not mere constructive notice to the client, which under s. 189 has not the effect of actual fraud, but the rule applies that the principal cannot retain a benefit obtained for him by the fraud of the agent. *LOCHER v HOWLETT*, 13 N.Z.L.R. 584.

[N.Z., Act of 1885, s. 189.]—Notice of unregistered interest—*Tenancy for less than three years—Purchaser.*—Where a creditor persuades his debtor to attempt to coerce a tenant of the latter to buy the land which he occupies under threat of selling to some one else if he does not, and so deprive him of the benefit of a valuable agreement to lease, and failing in this buys the land himself with a full knowledge of the facts, he is guilty of fraud within the meaning of s. 189 of the Act of 1885; and the tenant has a good equitable title binding on the purchaser and registered proprietor. *Semble*, that legal tenancies for terms not exceeding three years, not being registrable, can be created without registration under the land transfer system. (*See infra*, LEASES). *FINNORAN v. WEIR*, N.Z.L.R. 5 S.C. 280.

[N.Z., Act of 1885, s. 56 (3).]—Notice—Principal and Agent—*Common agent—Common solicitor—Purchaser for value—Proof in bankruptcy—Election—Knowledge.*—The plaintiff was the registered proprietor, under *The Land Transfer Act*, of a mortgage from one B. to secure £600. He gave L. H., a member of the firm of H. & Co., solicitors, a power of attorney to realise his moneys for him, and, for that purpose, to release or transfer this and other mortgages. L. H. was also, together with Lady W., a trustee of certain funds under a trust known as the W. trust; and he and Lady W., as such trustees, had permitted a considerable amount of the trust funds to remain uninvested in the hands of his firm, H. & Co., the firm allowing interest on the amount. In August and September, 1892, the beneficiaries interested in these trust funds were pressing L. H. to replace them by banking them in the names of the trustees, or by finding securities for them. On the 26th September, 1892, L. H., as part of a settlement with the W. trust, executed, as attorney for the plaintiff, a transfer to himself and Lady W., as trustees of the W. trust, of the plaintiff's mortgage from B., securing £600. The transfer was expressed to be in consideration of £600 paid by the W. trustees to the plaintiff, but no money, in fact, passed, a mere entry in the books of H. & Co. being made, by which the W. trustees were debited and plaintiff credited with the amount. H. & Co. were, at the time, hopelessly insolvent, the account into which the W. trust funds had been paid being largely overdrawn, and remaining so up to the time of their bankruptcy, which occurred in March, 1893. The transfer of mortgage was registered under *The Land Transfer Act* by H. & Co., who acted in the transaction as solicitors both for the W. trustees and the plaintiff. The transaction was carried out without the knowledge of the plaintiff, who was resident in England. After the bankruptcy of H. & Co., the defendants were appointed trustees of the W. trust in the place of L. H. and Lady W. In an action to recover the £600 from the defendants: *Held*, that there had been no

payment of the amount by the W. trustees to the plaintiff, they not being entitled to treat the prior payment to H. & Co., as their own agents, as a payment to them as agents for the plaintiff, and that the plaintiff was, therefore, entitled either to recover payment, or to have the mortgage re-transferred, on the ground that he had been deprived of it by fraud, and that the W. trustees were not *bonâ fide* purchasers for value. *Thorn-dike v. Hunt* (28 L.J. Ch. 417) and *Taylor v. Blakelock* (32 Ch.D. 560) distinguished. After the bankruptcy of H. & Co., the plaintiff proved against their estate for the £600, and received dividends. *Held*, that this did not prevent him from afterwards pursuing his remedy against the defendants, it not being shown that he had, at the time of proving, a full knowledge of the circumstances entitling him to recover from the defendants. *ECCLLES v. HALL*, 13 N.Z.L.R. 433. (Full Court).

[N.S.W., Act of 1862, s. 111.]—Notice—*Rights of holder of transfer—Transfer.*—The protection which s. 111 of *The Real Property Act* affords against notice to a transferee under the Act only applies where the transferee's title has been completed under the Act by the transfer being registered. *BAKER'S CREEK CONSOLIDATED GOLD MINING CO. v. HACE*, 15 N.S.W.L.R. (Eq.) 207. (Full Court.)

FURTHER ADVANCES.

Under registered mortgage—Caveat
See CAVEAT AGAINST DEALINGS (D.).

GRANT.

See CROWN GRANT.
Declaration of trusts in, refused
See TRUSTS AND EQUITIES—Recognition of Trusts.

HEIR-AT-LAW.

Right of, to restrain Registrar from bringing land under Act
See BRINGING LAND UNDER ACT.
ARCHIBALD v. ARCHIBALD, 5 V.L.R. (Eq.) 180.

HIGHWAY.

See EASEMENT.

HUSBAND AND WIFE.

[Q.]—*Married woman, acknowledgment by.* A wife being examined apart from her husband is at liberty until the last moment to state she does not understand what she is about and will not go any further. *BURKE v. FOX*, B.C.R., September 18, 1883.

[VICTORIA, Act of 1869, s. 6] — *Married woman, acknowledgment by—Commissioner's certificate—Burden of proof that Statute has been complied with.*—Where the form prescribed by *The Transfer of Land Statute* for the certificate to be given by a Commissioner for taking the acknowledgments of married women

to bar dower has not been strictly followed, the onus of proving that the requirements of the Act, with reference to the taking of such acknowledgment have been complied with, lies on the person claiming under the acknowledgment. *In re KERR*, 1 V.R. (L.) 199; 1 A.J.R. 163. (Full Court.)

[Q., ACT OF 1861, s. 82.]—**Married woman—Agreement to transfer—Devise of land subject of agreement—Specific performance**—B.'s wife in 1874 purchased certain land with his consent, and the transfer, endorsed by him "I consent thereto," was duly registered after some lapse of time. On 25th August, 1875, she signed a document relinquishing all claim to the property in his favour in consideration of his paying a certain promissory-note due by her. In 1881, prior to the registration, she died, devising her property to one of her daughters. After her death the deceased was registered as the proprietor of the land, and the husband now sought specific performance of the agreement of 25th August, 1875. *Held*, that s. 82 of *The Real Property Act of 1861* did not alter the law, and must be construed to mean that transfers to married women were the same as conveyances at common law, and gave no new right; that the endorsement on the certificate of title did not effect a trust for her separate use in respect to the land; and that no trust for the wife's separate estate having been made, judgment must be for the defendants. *BURKE v. Fox*, B.C.R., 19th September, 1883.

[Q., ACT OF 1861, ss. 30, 87, 112.]—**Married woman—Husband's life estate before Married Woman's Property Act, 1890—Unacknowledged agreement**.—The Real Property Acts do not affect a married woman's fee-simple acquired before marriage. The husband has a freehold estate during their joint lives, and can obtain a certificate of title as owner of such freehold and be registered as proprietor thereof. The plaintiff (a married woman, married before the commencement of *The Married Woman's Property Act*, 1890) charged land of which she had been registered as proprietor in fee-simple before her marriage with the amount of her husband's debts to the defendants, Scott, Dawson and Stewart, by an unacknowledged agreement. Neither of the parties contemplated charging the husband's estate, and defendants, Scott, Dawson and Stewart, proved in his subsequent insolvency for the full amount of his indebtedness, although they were in possession of the certificate of title under the agreement. *Held*, that the agreement was not binding on either husband or wife, and that plaintiff was entitled to the delivery up of the certificate of title. *GRIMISH v. SCOTT, DAWSON AND STEWART*, 4 Q.L.J. 57. (Full Court.)

[Q., ACTS OF 1861 AND 1877.]—**Married woman, land registered in name of**—25 Vic., No. 14—41 Vic., No. 18.—Property registered under the Real Property Acts in the name of a married woman, before the passing of *The Married Woman's Property Act of 1890*, is, since the commencement of that Act, her separate property. *QUEENSLAND TRUSTEES LIMITED v. REGISTRAR OF TITLES*, 5 Q.L.J. 46. (Full Court.)

[Q., ACT OF 1861, ss. 30, 44, 82, 87, 100.]—**Married woman—Life interest of husband in land in name of wife**.—Where land under *The Real Property Act* is registered in the name

of a married woman, the husband has a life interest in the rents and profits, and the land cannot be transferred without his consent. *In re McLEOD*, 1 S.C.R.(Q.) 173. (Full Court.) [But see *Married Women's Property Act*, 1890 (54 Vic., No. 9)].

[VICTORIA, ACT OF 1866, s. 61.]—**Married woman, mortgage by—Covenant in—No acknowledgment**.—An action may be maintained against a married woman upon a covenant to pay in a mortgage under the Act, although the instrument, not having been acknowledged as required by s. 61 *supra*, is ineffectual to assign or transfer any interest in the mortgaged premises. *TREWHELLA v. WILLISON*, 4 V.L.R. (L.) 122.

[N.Z., ACT OF 1885, s. 165.]—**Married woman, transfer by—Consent of husband**.—Under *The Land Transfer Act*, 1885, it is not necessary to procure the consent of the husband when land is being transferred by a married woman to a purchaser. *In re PYKETT*, N.Z.L.R. 5 S.C. 442.

[N.S.W., ACT OF 1862.]—**Succession—Wife's realty**—26 Vic., No. 20.—By 26 Vic., No. 20, the wife's realty in the colony, after the husband's tenancy by the courtesy has expired, devolves on the wife's next-of-kin, and not on her heir-at-law. *PLIMLEY v. SHEPHERD*, 1891 A.C. 244.

ILLEGALITY.

Of Crown Grant

See CROWN GRANT.

INDEFEASIBLE TITLE.

See CERTIFICATE OF TITLE (B.).

See CROWN GRANT.

INDEMNITY.

Of lessee by assignee

See LEASE.

Implied covenant to indemnify where mortgaged land transferred

See MORTGAGE.

INFANT.

Right of election after breach of trust

See TRUSTS AND EQUITIES—*Recognition of*.

Transfer of selection by—Repudiation at majority

See TRUSTS AND EQUITIES

HALL v. LODGE, 7 N.S.W.L.R. (Eq.) 44.

[N.Z., ACT OF 1885.]—**Maori—Transmission—Infant's trustees**.—*Semble*, where a Maori infant is registered proprietor of land under *The Land Transfer Act*, and trustees of his land have been appointed by Order-in-Council under *The Maori Real Estate Management Acts*, the District Land Registrar ought not to register a transfer by the trustees of the land of the

infant until the Order-in-Council has been registered as a transmission. *TOKO REIHANA v. MOORE*, 8 N.Z.L.R. 315.

INJUNCTION.

See BRINGING LAND UNDER ACT.

Against application to bring land under the Act

See BRINGING LAND UNDER ACT

BETHUNE v. PORTEOUS, 19 V.L.R. 161.

To restrain registration of Sheriff's transfer—Practice

See SALES BY SHERIFF.

INSOLVENCY.

See BANKRUPTCY.

INSPECTION.

Of documents

See INSTRUMENTS AND DOCUMENTS OF TITLE.

Of records

See INSTRUMENTS AND DOCUMENTS OF TITLE—*Inspection and production.*

Of title-deeds lodged with Registrar

See BRINGING LANDS UNDER ACT—*Duties of Registrar.*

Re PARISH, 9 N.Z.L.R. 262.

See REGISTRAR, DUTIES OF.

INSTRUMENTS.

See DUPLICATE.

As Evidence

See EVIDENCE.

Form of

See REGISTRAR, DUTIES OF.

Meaning of term—Includes will

See INTERPRETATION OF ACTS.

LITTLE v. DARDIER, 12 N.S.W.L.R. (Eq.) 319.

Schedule of trusts

See TRUSTS AND EQUITIES.

INSTRUMENTS AND DOCUMENTS OF TITLE.

Certificate of title

See CERTIFICATE OF TITLE.

Crown grant

See CROWN GRANT.

Evidence of

See EVIDENCE.

Interpretation of instruments

See INTERPRETATION.

Lease

See LEASE.

Mortgage

See MORTGAGE.

Transfer

See TRANSFER.

Will

See TRANSMISSION.

INSTRUMENTS AND DOCUMENTS OF TITLE.

A. ALTERATION.

B. ATTESTATION AND EXECUTION.

C. CORRECTNESS OF INSTRUMENT.

[*See also* CERTIFICATE OF TITLE (A.)].

D. EVIDENCE.

E. INSPECTION.

F. PRODUCTION.

G. RECTIFICATION.

A. ALTERATION.

[N.Z., ACT OF 1885.]—*Alteration — Memorandum of prior encumbrances — Endorsement after execution — Whether a material alteration avoids instrument or registration.*—The endorsement, after execution upon a memorandum of mortgage of land under *The Land Transfer Act*, of a note stating that the document is subject to a prior mortgage has no material effect upon the instrument or the registration, and does not vitiate either. *BARKER v. WELD*, N.Z.L.R. 3 S.C. 104.

B. ATTESTATION AND EXECUTION.

[N.Z., ACT OF 1885, ss. 160-3.]—*Execution — Attesting witness.*—*Semble*, the Registrar ought to make the inquiries indicated in ss. 160-3 of the Act, and the attesting witness ought to be in a position to answer them. *Ex parte DAVY* (Registrar), 6 N.Z.L.R. 760. (Court of Appeal.)

[N.Z., ACT OF 1885, ss. 169 (2).]—*Execution of document in foreign country — Verification of—Omission of certificate by British Consul — Declaration made “by virtue of the provisions of ‘The Statutory Declarations Act, 1835.’”*—Where a statutory declaration, verifying the due execution of a memorandum of transfer in a foreign country, bore the seal of the office of the British Consul and his signature, *Held* that the certificate of the Consul that it was made according to the laws of such foreign country might be dispensed with; but that the declaration was rendered invalid by a statement that it was made “by virtue of the provisions of *The Statutory Declarations Act, 1835.*” *In re KAURI TIMBER Co., LIMITED*, 12 N.Z.L.R. 541.

[VICTORIA, ACT OF 1866, s. 115.]—*Who may be witness to instrument.*—The manager of a bank who is also a J.P. is not incapacitated from acting as attesting witness to the execution of a mortgage under *The Transfer of Land Statute* to his bank, upon the ground that he is an interested party. *BANK OF VICTORIA v. McMICHAEL*, 8 V.L.R. (L.) 11.

C. CORRECTNESS OF INSTRUMENT.

[Q., ACT OF 1861, s. 139.]—*Correctness of title—Authority to register.*—Section 139 of *The Real Property Act of 1861* casts on the alienee

the responsibility for falsehood or negligence in the endorsed certificate that an instrument is fit for registration. The endorsement forms no part of the deed, and it is the duty of the applicant to verify the correctness of an instrument or endorsement before registration. *MERRY v. AUSTRALIAN MUTUAL PROVIDENT SOCIETY, B.C.R., 2nd August, 1872. (Full Court.)*

D. EVIDENCE.

[S.A., ACT OF 1861, ss. 33, 35, 37, 38.]—*Evidence—Certified copy memorandum of mortgage—Certificate of registration—Evidence Act, 1852, s. 2.*—A copy of a memorandum of mortgage under *The Real Property Act of 1861*, signed and certified as a true copy by the officer to whose custody the original is entrusted, is receivable in evidence, under *The Evidence Act, 1852*. The form—"Particulars entered in the Register Book, Vol. , Fol. , the day of , 18 , at , noon. Registrar-General." with a distinguishing number, is a certificate, and sufficiently complies with ss. 37 and 38 of *The Real Property Act of 1861*. *PRICE v. PRICE, 23 S.A.L.R. 121. (Full Court.)*

E. INSPECTION.

[Q., ACT OF 1861, s. 46.]—*Inspection of records.*—The records of the Registrar-General are not open to inspection by anyone, and an application for an order under s. 46, made by a stranger, was refused, where it was left in doubt how the production of the document could benefit him. *HUTTON v. LETHBRIDGE, B.C.R., 16th July, 1872.*

[N.S.W., ACT OF 1862, s. 25.]—*Inspection—Title deeds of proprietor.*—The Registrar is not entitled to notice of an application for an order under s. 25 of *The Real Property Act* that he produce the title deeds of an applicant proprietor for inspection, and he has no *locus standi* to move to set aside such order where it has been made *ex parte*. *Semble*, notice of the application for an order for inspection should be given to the proprietor of the land. *In re HEATH, 14 W.N. (N.S.W.) 108. (Full Court.)*

[VICTORIA, ACT OF 1890, s. 37.]—*Leave to inspect documents.*—A judge has a discretion to refuse an application, made under s. 37 of *The Transfer of Land Act, 1890*, for leave to inspect documents lodged with the Registrar of Titles. *FRIEZER v. KERSHAW, 17 A.L.T. 41.*

F. PRODUCTION.

[Q., ACT OF 1861, s. 46.]—*Production of documents.*—The above section does not refer to judicial proceedings. The Registrar was ordered to produce an application to bring land under the Act which he had stated was in his possession. *MORRISON v. ROBERTS AND HART, B.C.R., 28th April, 1871.*

[Q., ACT OF 1861, ss. 46, 49, 122.]—*Production of documents.*—An application for the production of a certified copy of a memorandum of conveyance, in respect of which a certificate of title had been issued, was refused, as the production of the document could be enforced at the

trial in the ordinary way. *NEWTON v. BROWN, B.C.R., 25th October, 1872.* Such an application should be made by summons. *Ib.*

G. RECTIFICATION.

[S.A., ACT OF 1861.]—*Rectification of documents.*—Where rectification of a transfer of land under *The Real Property Act, 1861*, was sought by the entry thereon of certain mortgages alleged to have been fraudulently omitted: *Held*, that as the rectification of the transfer would be inoperative without the rectification of the register, and that as there was nothing on the bill to show the state of the register or that such rectification would not affect subsequent interests, a demurrer to the bill should be allowed. *Quare*: Whether the equitable doctrine of reformation of instruments is applicable to documents affecting land under *The Real Property Act of 1861*? *FERRET v. CLARK, 10 S.A.L.R. 202.*

INTEREST.

Meaning of

See INTERPRETATION—Words.

See MORTGAGE.

See TRUSTS AND EQUITIES.

Due under mortgage

See MORTGAGE—Power of sale.

INTERPRETATION.

A. OF ACTS.

1. *Construction of Acts.*

2. *Words.*

B. OF INSTRUMENTS.

A. INTERPRETATION OF ACTS.

1. *Construction of Acts.*

[Q., ACT OF 1861, s. 1.]—*Construction.*—The first section of the Act is an injunction to the Court not to apply the same rules of construction to these instruments as to mortgages at common law. *TRUST AND AGENCY CO. v. MARKWELL, B.C.R., 16th March, 1874.*

[Q., ACT OF 1861.]—*Construction.*—The old maxims of law are not to be applied further than are warranted by the Act. Old phantoms should not be conjured up in the interpretation of the Act. *TRUST AND AGENCY CO. v. MARKWELL, B.C.R., 16th March, 1874. (Full Court.)*

[N.S.W., ACT OF 1878, s. 4.]—*Construction.*—Section 4 of the N.S.W. Act of 1878 is not mandatory upon the Court to send to trial any issue which may be raised; the Court must decide in each case whether there are facts *bond fide* in issue between the parties. *LETHBRIDGE v. MITCHELL, 8 N.S.W.L.R. (L.) 249. (Full Court.)*

[N.S.W., ACT OF 1862, s. 23.]—*Construction.*—Section 23 of the New South Wales Act of 1862, requiring notice by a caveator to Registrar, is not merely directory, and in the absence of such notice the caveat lapses. *See BRINGING LAND UNDER ACT, NICHOLLS v. LEE, 11 N.S.W.L.R. (L.) 122. (Full Court.)*

[N.Z., Act of 1885.]—Construction.—The Court is not bound to look within the four corners of *The Land Transfer Act* for all the rights of property. Such rights as subsisted before the Act will generally be protected by the Court, and if machinery be not provided the Court will use its ordinary powers. *In re TANNER*, N.Z.L.R. 5 S.C. 102.

[VICTORIA, Act of 1890.]—Construction.—*Consolidating Acts of 1890*.—The Consolidating Acts of 1890 were not intended to change the law in any particular. MERCANTILE, FINANCE, TRUSTEES AND AGENCY COY. OF AUSTRALIA, LTD., *v. HALL*, 19 V.L.R. 233; 14 A.L.T. 291. (Full Court.)

[VICTORIA, Act of 1866, s. 50.]—Construction.—Fraud.—Section 50 of *The Transfer of Land Statute* should be construed strictly as being to a great extent restrictive of the rights of persons at law or in equity, and its exceptions liberally. Fraud in that section applies equally to cases of fraud by vendor and purchaser. *CHOMLEY v. FIREBRACE*, 5 V.L.R. 57. (Full Court.) See also FRAUD.

2. Words.

[N.Z., Act of 1885, s. 190.]—“Bona-fides.”—See *KATENE TE WHAKARURU v. PUBLIC TRUSTEE, TE MIRA v. PUBLIC TRUSTEE*, 12 N.Z.L.R., 651, and *HAY v. SOLLING*, 16 N.S.W.L.R. (L.) 61. Sub. REMEDIES FOR DEPRIVATION, *infra*.

[Q., Act of 1861.]—“Costs” in Queensland Act of 1861, s. 127, includes all expenses of litigation necessarily incurred in establishing a plaintiff's claim to damages from the Assurance Fund. *COX v. BOURNE*, 8 Q.L.J. 66.

[VICTORIA, Act of 1866, ss. 49, 50.]—“Fraud” —Meaning of term in ss. 49 and 50 of the Victorian Act of 1866. *CULLEN v. THOMPSON*, 5 V.L.R. (Eq.) 147.

[Tas.]—“Heir-at-law” —Meaning of these words in a will. *Re COOK*, 12th July, 1898, Tas. Dig. col. 106.

[N.S.W., Act of 1862, ss. 3, 39.]—“Instrument” includes a will. *LITTLE v. DARDIER*, 12 N.S.W.L.R. (Eq.) 319.

[S.A., Act of 1861, s. 36.]—“Instrument”—An “instrument,” within the meaning of s. 6 of the Act of 1861, is an instrument in one of the forms prescribed by the Act, and capable of registration. *CUTHBERTSON v. SWAN*, 11 S.A.L.R. 102. (Full Court.)

“Instrument.”—See CERTIFICATE OF TITLE—*Conclusive effect*.

[Q., Acts of 1861 and 1877.]—Interest—Security.—The word “interest” in the interpretation clause of *The Trustees and Incapacitated Persons Act of 1867* (31 Vic., No. 19, s. 1), is of general application, and is not limited to an “interest in land,” as distinguishable from a security upon lands under the Real Property Acts. *Re CAIN*, 5 Q.L.J. 93.

[VICTORIA, Act of 1866, s. 135; Tas., Act of 1862, s. 110.]—“No probable grounds” for refusal of Registrar to bring land under Act. *Ex parte BOWMAN*, 7 V.L.R. (L.) 314, 3 A.L.T. 25. *In re FAWNS*, June 28, 1867, Tas. Dig. col. 106. See BRINGING LAND UNDER ACT.

[S.A., Act of 1861, s. 124.]—“Other action for the recovery of land.”—See REMEDIES FOR DEPRIVATION. *CUTHBERTSON v. SWAN*, 11 S.A.L.R. 102.

[N.S.W., Act of 1878, s. 4.]—“Party finally successful.” See BRINGING LAND UNDER ACT—*Trial of issues*. *JONES v. HILL*, 7 N.S.W.L.R. (C.L.) 369; *TIERNNEY v. LOXTON*, 13 N.S.W.L.R. (L.) 115; *Re LAWRIE* (COHEN, CAVEATOR), 15 W.N. (N.S.W.) 108.

[N.S.W.]—“Plaintiff,” within s. 99 of the (N.S.W.) Companies Act. See COMPANY. *In re ANGLO-AUSTRALIAN I. F. AND L. CO., LTD.*, 9 W.N. (N.S.W.) 128.

[VICTORIA, R.P. STATUTE of 1864 (No. 213), s. 17.]—“Rent”—Annual interest on mortgage by deposit of deed.—Inasmuch as the word “rent” is made, by s. 17 of *The Real Property Statute*, 1864 (No. 213), to extend to “all annuities and periodical sums of money charged upon or payable out of any land,” it includes annual interest on money advanced upon the security of a deposit of title deeds without writing. *BARNET v. WILLIAMS*, 15 V.L.R. 205, 10 A.L.T. 230.

[N.S.W., Act of 1862, s. 62.]—“Such caveat”—Meaning of in N.S.W. Act of 1862, s. 82. See BRINGING LANDS UNDER ACT. *Ex parte MACINTOSH*, *In re BARNES*, 10 S.C.R. (N.S.W.) 146.

[VICTORIA, Act of 1866, ss. 49, 50.]—“Tenant.”—Meaning of term in ss. 49 and 50 of the Victorian Act of 1866. *CULLEN v. THOMPSON*, 5 V.L.R. (Eq.) 147; *SANDHURST, &c., BUILDING SOCIETY v. GISSING*, 15 V.L.R. 329.

[VICTORIA, Act of 1890, s. 74.]—“Tenant.”—The word “tenant” in s. 74 of *The Transfer of Land Act*, 1890, includes a tenant for life. *BLACK v. POOLE*, 16 A.L.T. 155.

“Tenant or occupier.”—See MORTGAGE—*Powers and remedies of mortgagee*.

B. INTERPRETATION OF INSTRUMENTS.

[Q., Act of 1861.]—Deed of grant—Description of premises.—In a grant the land was described as “all that piece or parcel of land . . . containing by admeasurement 1280 acres, exclusive of swamp, be the same a little more or less,” &c. Held, that the grant included the swamp. *Re PORTION No. 1 ON NERANG CREEK C.T. 49542*, 1 Q.L.J. Supp. 57. (Full Court.)

Instruments not under the Act—Construction of—see *WALTERS v. ELDRIDGE*, 4 Q.L.J. 118; *HAYES v. BOURNE*, 7 Q.L.J. 146.

[Tas.]—Marriage settlement—Registered proprietor—Transfer of reversionary interests.—Under his marriage settlement A. became entitled to a life estate, remainder to his children, and if he left one child and that died under 21, then to X. and Y., but the settlement contained no gift over on total failure of issue, which event happened. Where B. got a transfer of A.'s life and X. and Y.'s reversionary interests, held he was entitled to be registered proprietor under *The Real Property Act*. *In re MILLIGAN*, September 6, 1867, Tas. Dig. col. 105.

INTERRUPTION.

Of adverse possession

See ADVERSE POSSESSION.

INTESTACY.

See, TRANSMISSION.

INTRUDER.

See ADVERSE POSSESSION.

INVESTIGATION OF TITLE.

Notice of error in title

See REMEDIES FOR DEPRIVATION.

ISSUES.

Trial of, on application to bring land under Act

See BRINGING LAND UNDER ACT—
Trial of issues.

JUDGE.

Power of, by order in Chambers, to prevent lapse of caveat against application

See BRINGING LAND UNDER ACT.

Re POWER, 6 W.W. and A'B. (L.) 81.

Ex parte GUNN, 3 V.L.R. (L.) 36.

In re MORRICE, (COMRIE, CAVEATOR) 15 N.S.W.L.R. (L.) 107.

JUDGMENT.

Endorsement of, on register.

See TRANSFER.

Entry of, on duplicate certificate of title.

See REGISTRAR, DUTIES OF.

Priorities between judgments

See TRUSTS AND EQUITIES—*Priorities.*

JUDGMENT CREDITOR.

Caveat by

See CAVEAT AGAINST DEALINGS.

Right of, to prevent land being brought under Act

See BRINGING LAND UNDER ACT—
(C.), (b.)

JUDGMENT DEBTOR.

Transfer by

See SALES BY SHERIFF.

JUDICIAL DUTY.

Of Registrar

See REGISTRAR, DUTIES OF.

JURISDICTION.

See PRACTICE.

Of Commissioner of Titles

See PRACTICE.

Equitable, of Supreme Court

See CAVEAT AGAINST DEALINGS.

See FRAUD.

See TRUSTS AND EQUITIES.

Of Supreme Court—Calling in certificate of title

See CERTIFICATE OF TITLE—(A.)
Cancellation.

Of Supreme Court to deal with caveats.

See CAVEAT AGAINST DEALINGS.

Of Supreme Court to direct inquiry as to disputed title

See PRACTICE.

Of Supreme Court to grant costs

See COSTS OF PROCEEDINGS ON
CAVEATS.

LACHES.

See BRINGING LAND UNDER ACT—
Lapse of caveat.

Delay

See CAVEAT AGAINST DEALINGS.

Delay—Fraud in bringing land under Act

See REMEDIES FOR DEPRIVATION.

Delay in impeaching a Crown grant may constitute laches on the part of the Crown

See CROWN GRANT.

LAND BOARD.

Power of, to settle question of boundary

See BOUNDARIES.

LANDS.

What, may be brought under Act

See BRINGING LAND UNDER ACT (A).

LANDLORD AND TENANT.

See LEASE.

See MORTGAGE—*Leaseholds.*

LAPSE.

Of caveat

See CAVEAT AGAINST DEALINGS.

LEASE.

From Crown—Mortgage of

See MORTGAGE—*Leaseholds.*

Practice—Parties—Action for specific performance of lease

See HOOD v. CULLEN, 6 N.S.W.L.R. (Eq.) 22; 1 W.N. (N.S.W.) 117.

Rights under unregistered lease

See **CERTIFICATE OF TITLE—(B.)**
Conclusive effect.

Sale by Mortgagee subject to unregistered lease

See **FRAUD,**
THOMSON AND CHIPP v. FINLAY, N.Z.L.R.
5 S.C. 203.

Sale of, under *fi. fa.*—Covenant not to assign

See **SALES BY SHERIFF.**

With right to purchase—Caveating capacity

See **CAVEAT AGAINST DEALINGS.**

LEASE.

- A. ASSIGNMENT AND SUBLEASE.
- B. CREATION.
- C. COVENANTS.
- D. DETERMINATION.
- E. FORM.
- F. OPTION TO PURCHASE.
- G. UNREGISTERED LEASE.

A. ASSIGNMENT AND SUBLEASE.

[N.Z., Act of 1870.]—**Assignment—Breach of covenant—Registration.**—The District Land Registrar cannot refuse to register an assignment of a lease under *The Land Transfer Act* on the ground that the assignment amounts to a breach of covenant. *In re DUGGAN, N.Z.L.R. 2 S.C. 144.*

[N.Z., Act of 1870, s. 69.]—**Assignment—Liability of assignee—Land Transfer Act, 1870, s. 69.**—Section 69 of the Act of 1870 did not make the assignee of a lease liable to indemnify the original lessee against rent accrued due, nor against breaches of covenant occurring after he (the assignee) has assigned to some one else. *WILSON v. BRIGHTLING, N.Z.L.R. 4 C.A. 4. (Full Court.)*

[VICTORIA, Act of 1890, s. 103.]—**Assignment—Man of straw—Duty of trustee for creditors.**—A trader assigned his property to trustees for the benefit of his creditors. The property consisted of stock-in-trade and of the unexpired lease of the premises in which the business was carried on. The trustees took possession of the premises, and used them for the purpose of entirely disposing of the stock on them. *Held*, that although there had been no transfer of the legal estate, there had been an assignment of the beneficial interest in the lease, and that the trustees were justified in retaining moneys out of the estate to pay rent as long as they remained assignees and were unable to assign the lease or to procure an assignment, or so long as it was reasonable to retain it for disposing of the property assigned. *Held*, also, that in regard to the trustees' duties to the creditors, they were under an obligation to get rid of the lease at the first reasonable opportunity, and that after they had disposed of the stock-in-trade they were justified, if unable to assign the lease to a substantial person, to assign it to a man who was admittedly a man of straw. *STEVENSON AND SONS LTD. v. BRIND, 21 V.L.R. 109; 16 A.L.T. 166.*

[N.Z., Act of 1885, ss. 2, 36, 115.]—**Assignment—Trust deed executed by lessee and mortgagees—Receivership—Lease under Land Transfer Act—Transfer not executed by Transferees—Non-registration—Possession—Privity—Legal or equitable estate—Payment of rent—Implied tenancy—Transmission.**—The plaintiffs leased lands to H. by memorandum of lease under *The Land Transfer Act*. H. mortgaged these and other freehold and leasehold lands to several different mortgagees. Afterwards a deed, purporting to be a deed of settlement, was executed by H., the several mortgagees (except the first mortgagee), and the defendants, by which the other parties purported to grant, assign, and convey the mortgaged properties to the defendants upon certain trusts for their management and disposal, the payment of all rents and outgoings, the payment of the several mortgagees, and the payment to H. of any surplus moneys derived from the properties. The deed contained a clause that it should not be obligatory upon the trustees to exercise or put in force any of the powers or provisions given by or contained in it. As regards those lands which were under *The Land Transfer Act*, a memorandum of transfer to the defendants was also executed by H., but it was not executed by the defendants nor registered against the leases. The defendants went into possession of the whole estate, and paid the rent due to the plaintiffs out of the income from the estate during several years, but they afterwards went out of possession of the lands leased from the plaintiffs, and refused to continue paying the rent. *Held*, that the defendants had not become either legal or equitable assignees of the lease from the plaintiffs, or liable to the plaintiffs for the rent reserved. The whole of the payments of rent made by the defendants to the plaintiffs were received by the plaintiffs as payments by H., except the two last, one of which they received as proceeds of a distraint on goods, and the other of which they received as a payment by the defendants. The defendants, at the time of making the last payment, notified that they would go out of possession at the expiration of the period in respect of which the payment was made, and would pay no more rent. *Held*, that they did not, by the payments made by them, or by submitting to the distress, become tenants to the plaintiffs on the terms of the lease, and that they were not liable for any further rent. *TIMARU BOROUGH v. HOARE, 16 N.Z.L.R. 582. (Full Court.)*

[VICTORIA, Act of 1866.]—**Condition against assignment—Land Act of 1869, ss. 10, 20.**—A condition prohibiting assignment is invalid if it purports to be inserted in a lease under s. 20 of *The Land Act* of 1869, by virtue of s. 10 of that Act. *Ex parte BOND, 6 V.L.R. (L.) 458, 2 A.L.T. 94. (Full Court.)*

[VICTORIA, Act of 1866, s. 15.]—**Condition against assignment—Lease under Land Act 1869, s. 20 (5)—Transfer by sheriff.**—A lease from the Crown under s. 20 (5) of *The Land Act* of 1869, contained a condition not to assign without leave of the Governor-in-Council. The lease was duly registered under s. 15 of *The Transfer of Land Statute*. The sheriff having sold the interest of the lessee under s. 106 of that Act, the Registrar refused to register the transfer from the sheriff, as involving a breach of the

condition. *Held*, that the condition did not affect the involuntary transfers like the one in question, and the Registrar must register the *f. fa.* and transfer. *In re TRANSFER OF LAND STATUTE, Ex parte ELLISON*, 5 V.L.R. (L.) 59. (Full Court.)

[Q., ACT OF 1861, ss. 43, 71, 73, 104.]—**Covenant not to assign—Proviso for re-entry—Unregistered assignment in breach of covenant—No forfeiture.**—The registered proprietors of land demised for 14 years to B., who afterwards assigned to C., who subsequently assigned to A. The lease contained a covenant not to assign or sublet without leave. The assignments to C. and A. were made with the consent of the lessors. A. afterwards gave a bill of sale to X., and assigned the lease to X. by way of mortgage. This assignment was made without leave, and the instrument was never registered. *Held*, that an equitable mortgagee or encumbrance of land under the Real Property Acts who has not registered his assignment or security is in the same position as an equitable mortgagee of land under the general law who has not foreclosed; that the unregistered equitable assignment did not pass the legal interest, and that there had been no forfeiture by A. *Held*, also, that if the words of a proviso for re-entry do not clearly refer to the terms of a negative covenant, no re-entry can be made. *NAUMBURG v. ALBERTSON*, 3 Q.L.J. 125.

[S.A., ACT OF 1861, ss. 50, 124 (3).]—**Covenant not to sub-let—Entry—Ejectment—Covenant.**—A memorandum of lease under *The Real Property Act*, 1861, provided that the lessee should hold for a certain term, "subject, however, to the following covenants, conditions and restrictions, in addition to those implied by the Act." The covenants, &c., set out were to pay rates, to repair, and not to sub-let without consent. On ejectment brought for sub-letting: *Held* (1) That the stipulation as to sub-letting was a covenant, and not a condition; (2) That ejectment would not lie under s. 50 of *The Real Property Act*, 1861, it not being in the nature of things a covenant in respect of which default could be continued for six months. *Semble*, that s. 124 (3) of *The Real Property Act*, 1861, would not prevent ejectment for a common law forfeiture of the term. *SANDERS v. WADHAM*, 4 S.A.L.R. 73.

[VICTORIA, ACT OF 1890.]—**Covenant not to sub-let without lessor's consent—Sub-lease without consent—Covenant to pay rent—Sub-lease not registered—Action to recover rent—Subsequent registration of sub-lease—Use and occupation.**—Certain town premises, under *The Transfer of Land Statute*, were demised by the proprietor for a term of years, the lease containing a covenant that the lessees would not underlet or part with the possession of the premises without first obtaining the consent in writing of the lessor; and if the lessees failed to perform or observe such covenant the lessor might enter upon the premises and expel the plaintiffs and all other tenants and occupiers therefrom. The lessees, without having first obtained the consent in writing of the lessor, by a lease, bearing date the 13th March, 1890, sub-let a portion of the premises to the defendant for a term of five years and ten days, from the 15th March, 1889, at a yearly rental of £1,000, payable quarterly. The lessees brought an action against the defendant, alleging that by such sub-lease the plaintiffs sub-let the

premises to the defendant; that on the 8th February, 1890, the defendant paid £250 on account of the rent due by him under the sub-lease, but had refused to pay the balance which they claimed; and, alternatively, they claimed for the use and occupation of the premises from the 1st March, 1889, at the rate of £1,000 per annum. The defendant, by his defence, alleged that the plaintiffs had not, and would not, obtain the consent in writing; that the premises were under *The Transfer of Land Statute*, and the alleged sub-lease had not been registered, and would not be registered without such consent; and that there was no agreement on his part to pay for the use or occupation of the premises, and that he did not occupy them except in pursuance of an agreement dated on or about the 1st March, 1889, by which the plaintiffs agreed to sub-let the premises to him as from the 15th March, 1889, at a rental of £1,000 per annum, and in expectation of a sub-lease in accordance with such agreement, which the plaintiffs could not give, and he counterclaimed for specific performance of such agreement, or damages, £2,000. By their reply, delivered on the 24th September, 1890, the plaintiffs alleged that the defendant entered into possession of the premises well knowing that the consent in writing of the proprietor might not be obtained; and on or before the 10th April he became aware that the proprietor would not give such consent, and, with such knowledge, he had remained in possession, and was thereby estopped from raising the above defence. On the 30th September, 1890, the defendant put in a rejoinder, joining issue. On 27th April, 1891, the plaintiffs amended their reply, alleging that on the 22nd January, 1891, the proprietor of the premises duly consented in writing to the lease from the plaintiffs to the defendant, and it was duly registered on the 28th January, 1891. *Held*, by Webb J.: That even though the lease might be inoperative, because not registered, the covenant by the defendant to pay rent contained in such lease was operative, and the plaintiffs should therefore recover the amount of rent owing. On appeal to the Full Court: *Held*, the plaintiffs were entitled to hold such judgment on their claim for use and occupation as at the date of the commencement of the action; their claim for use and occupation was not merged into the sub-lease, and, if it were afterwards, when the sub-lease was registered, such merger was not pleaded as a defence. *Held*, also, on the counter claim, that specific performance having been given before the trial, the defendant was not entitled to judgment therefor, and would not recover on the alternative claim for damages. *MUNRO AND BAILLIEU v. ADAMS*, 17 V.L.R. 703.

[VICTORIA, ACT OF 1890, ss. 63, 92, 107, 108, 111.]—**Sublease—Claim against sublessee for use and occupation—Sublease not registered at date of action brought—Subsequent registration before trial—Sublease put in evidence—Merger of claim for use and occupation—Landlord and Tenant Act, 1890 (No. 1108), s. 22.**—M., the lessee of certain premises under the operation of *The Transfer of Land Act*, 1890, by a sublease dated March 13th, 1890, sublet the same to A. for a term of five years and ten days from March 15th, 1889. Under agreement with M. on March 1st, 1889, A. had entered and used the premises and continued to occupy and use them until

June 9th, 1890, when M. brought an action to recover rent reserved by a covenant in the sublease, with a claim in the alternative for use and occupation. The sublease provided for the payment of rent at the rate of £1000 per annum. On February 8th, 1890, A. paid to M. £250, and this was all that A. had paid in respect of the premises at the commencement of the action. In consequence of the refusal of the lessor to consent to the subletting of the premises M. was not able to procure the registration under *The Transfer of Land Act* of the sublease till after action brought. But the sublease was registered before trial and put in evidence by M. Webb J., being of opinion that M. was entitled to recover on the covenant in the sublease, gave judgment accordingly in his favour for £750. *Held*, upon appeal to the Full Court, that M. was entitled to hold such judgment on his claim for use and occupation as at the date of the commencement of the action; that his claim for use and occupation was not merged in the sublease, and if it were afterwards when the sublease was registered, such merger was not pleaded as a defence. *MUNRO AND BAILLIEU v. ADAMS*, 17 V.L.R. 708. (Full Court.)

[VICTORIA, ACT OF 1866, s. 10 c.]—Sale by Sheriff—Crown leasehold—Unregistered transfer of by Sheriff—Payment of rent by transferee—Forfeiture.—The Crown in this colony stands in the same relation to its tenant as an ordinary landlord to his tenant. An assignee by purchase at a sheriff's sale of a leasehold estate from the Crown, whose transfer has not been registered, has a sufficient interest to come into a Court of Equity to protect the land from forfeiture. If such an assignee tender the rent due before a re-entry is made for default in payment of rent, that is sufficient to prevent forfeiture. *Semble*, it may be otherwise where the re-entry has actually taken place. The provisions of *The Transfer of Land Statute* referring to registration have merely the effect that until the transfer to the assignee is registered the original lessee may act so as to defeat the title of the assignee. *KICKHAM v. THE QUEEN*, 8 V.L.R. 1, 250.

B. CREATION.

See also UNREGISTERED LEASE, *infra*.

[S.A., ACT OF 1861.]—Creation—Breach of trust.—R. by his will gave lands to trustees upon trust for sale. *Held*, that the trustees had no power to lease. *ROWELL v. KEATS*, 19 S.A.L.R. 8.

[N.Z., ACT OF 1885.]—Creation—Tenancy for less than three years.—*Semble*, that legal tenancies for terms not exceeding three years, not being registrable, can be created without registration under the Land Transfer system. *FINNORAN v. WEIR*, N.Z.L.R. 5 S.C. 280.

C. COVENANTS.

[VICTORIA.]—Covenants—Injunction to restrain breach of—Power of re-entry—Other powers.—Notwithstanding his right of re-entry on breach of the covenants contained in the Act, the lessor may obtain an injunction restraining the lessee from committing a breach. *MUNDAY v. PROWSE*, 4 V.L.R. (Eq.) 101.

[N.Z., ACT OF 1870.]—Covenant running with the land—Covenant by lessor to pay for buildings erected by lessee—Re-entry by lessor.—

The right to sue on a covenant by a lessor to pay "at the expiration or sooner determination" of the term for any buildings which the lessee might during the term erect, is not defeated by re-entry or forfeiture before the expiration of the term. The benefit of such a covenant runs with the land where assigns are named, and the lessee has built in order to keep a publican's license in force which he was bound to do by the terms of his lease. *DUNBAR'S OFFICIAL ASSIGNEE v. DEAL AND MANNING*, 7 N.Z.L.R. 9. (Full Court.)

[S.A., ACT OF 1861, ss. 49, 50, 89.]—Further covenants of foreign nature—Covenants implied.—Sections 49 and 50 of *The Real Property Act* of 1861 provide that certain covenants and powers shall be implied in every memorandum of lease of land under that Act, and s. 89 provides that every implied covenant and power may be registered or modified by express declaration in the instrument. These provisions do not prevent the introduction into such memorandum of lease of covenants and powers of an entirely different character from and not mere modifications of the implied covenants and powers. *BUCKNALL v. REID*, 10 S.A.L.R. 188.

D. DETERMINATION.

And see cases sub MORTGAGE.

[VICTORIA, ACT OF 1866, ss. 15, 36, 47.]—Determination.—Certificate of title of lessee from Crown—Effect of.—A certificate of title under the Act, certifying that the holder is the proprietor of a leasehold for a certain term of years, cannot defeat the right of the Crown to determine the lessee's estate. *MATT v. PEEL*, 2 V.R. (M.) 27; 2 A.J.R. 133.

[N.S.W., ACT OF 1862, ss. 51, 52, 53, 111.]—Determination of lease—Re-entry—Equitable titles to land under the Real Property Act—Relief from forfeiture—What amounts to de facto possession of a mine—Practice—Amendment.—A lessee of land under *The Real Property Act* covenanted in his lease to make entries in books, to be kept at a proper office on the land demised, and, upon any breach of covenant, the lessor was to be at liberty to enter upon the lands demised, and to determine the lease. No office was erected on the land; on adjoining land of the lessee there was an office, but no books were kept there. *Held*, by Full Court, that the covenant had been broken, both by not keeping the necessary books, and by not erecting an office on the land demised, and that, in consequence of that breach, the defendant was entitled to re-enter and take possession of the land. *Held*, also (by Owen C.J. in Equity), that the lessor was entitled to determine the lease, at any rate, as against the lessee, without taking the statutory steps required by s. 53 of *The Real Property Act*, the provisions of that section only applying where, under the lease, the lessor had no power to determine the lease himself. *Held*, also (by Owen C.J. in Equity), that the protection which s. 111 of *The Real Property Act* affords against notice to a transferee under the Act only applies where the transferee's title has been completed under the Act by the transfer being registered. *THE BAKER'S CREEK CONSOLIDATED GOLD MINING CO. v. HACK*, 15 N.S.W.L.R. (Eq.) 207. (Full Court.)

E. FORM.

[Q., ACT OF 1861, s. 52; AMENDING ACT, 1877, ss. 18, 31.]—Form—Lease not in scheduled form—Lease for more than three years—Effect of tenancy under—Destruction of buildings by fire—Abatement of rent.—The plaintiff leased land under the Acts to the defendant for five years by a lease by which defendant agreed to keep the buildings on the land in good repair, and pay the taxes. The lease was not in Form E. as provided by s. 52 of the Principal Act. Defendant occupied for nearly four years under the agreement, when the buildings were destroyed by fire. *Held, per Chubb A.D.C.J.*, that the lease was void under s. 52 of the Principal Act, but that defendant, having paid rent quarterly in accordance with the terms of the lease, became a tenant from year to year; and that such tenancy was a demise within s. 31 of *The Amending Act of 1877*, so that defendant was released from the obligation of paying rent until the buildings were reinstated by his landlord. *HILL v. Cox*, 1 Q.L.J. 78.

F. OPTION TO PURCHASE.

[S.A., ACT OF 1861; *CF.* ACT OF 1885, s. 117.] Caveat.—A lessee with right of purchase is not entitled, before time for payment of the purchase money has arrived, to caveat against his landlord dealing with his property. *In re CLARK & HARVEY*, 2 S.A.L.R. 191.

[N.Z., ACT OF 1885, s. 189.]—Failure to exercise option—Specific performance—Breach of agreement by plaintiff—Non-payment of rates—Fraud—Notice of unregistered interest—Possession—Expenditure on improvements—Successive registered proprietors.—The plaintiff went into possession of and erected buildings on land under an agreement with the then registered proprietor under *The Land Transfer Act* for a lease of it for ten years, the lessor and his successors to take the buildings at a valuation at the end of the lease, and the plaintiff to have the option of purchasing in case of the lessor selling. The defendant was the last of three successive registered proprietors of the fee-simple in succession to the proprietor who made the agreement with the plaintiff, each of whom purchased with knowledge of the plaintiff's agreement, of his possession, and of his expenditure. The plaintiff's agreement was never registered. *Held*, that it was a fraud within the meaning of s. 189 of *The Land Transfer Act, 1885*, for the defendant to seek to deprive the plaintiff of his rights under the agreement, and that the defendant must perform the contract entered into by his predecessor in title. The plaintiff having omitted to declare his purchase when the land was sold by the proprietor who made the agreement with him: *held*, that he had lost his right to purchase and could claim a lease only, without a purchasing clause, from the defendant. By the terms of the agreement the plaintiff was to pay the rates. It was alleged, but not proved, that he had not done so. *Held*, that had it been proved it would have been no answer to the action claiming performance of the agreement. *MERRIE v. M'KAY*, 16 N.Z.L.R. 124.

[N.Z., ACT OF 1885, s. 87.]—Registration—Protection.—A right of purchase acquired by a lessee is as much protected by registration as the term granted by his lease. *RUTU PEEHI v. DAVY*, 9 N.Z.L.R. 134.

G. UNREGISTERED LEASE.

See also CERTIFICATE OF TITLE—B (c)—Rights of occupier.

N.Z.]—Unregistered draft memorandum of lease—Effect of.—Under the provisions of *The Land Transfer Act* a tenant who occupies under a draft memorandum of lease for more than three years, signed by lessor and lessee, but not registered, is a legal tenant at will only. *EDWARDS v. WALLACE*, N.Z.L.R. 1 S.C. 134.

[N.Z., ACT OF 1870, s. 45.]—Unregistered instrument—Effect of.—Under *The Land Transfer Act* the mere execution of registrable instruments passes no interest in land; it merely gives a right in personam, and a lease not registered can only take effect as an agreement. *OTAGO HARBOUR BOARD v. SPEDDING*, N.Z.L.R. 4 S.C. 272.

[N.Z., ACT OF 1885.]—Unregistered lease—Lease for less than three years—Valid through unregistered.—Semble, that legal tenancies for terms not exceeding three years, not being registrable, can be created without registration under the Land Transfer system. *FINNORAN v. WEIR*, N.Z.L.R. 5 S.C. 280. See also sub title "FRAUD."

[S.A., ACT OF 1861, s. 47.]—Unregistered lease—Lease for less than three years.—A. brought a suit for specific performance of a contract of sale containing a memorandum of lease. The lease was for two years, and was in the form prescribed by s. 47, and was registered under the Act. Defendant argued (1) That there was no valid contract under *The Real Property Act*; (2) That *The Real Property Act* was itself invalid as contravening *The Constitution Act*. Judgment for plaintiff (*diss. Boothby J.*) *AULD v. MURRAY*, S.A.R. (Eq.), Dec. 15, 1863; quoted in *Lovekin's Dig.* cols. 138 et seq.

[S.A., ACT OF 1861.]—Unregistered lease—Registered proprietor—Encumbrances.—A holder of a certificate of title holds it absolutely free from all encumbrances not notified thereon, and is, therefore, not bound by any demise not so notified. *Accord*: *MANNING v. CROSSMAN*, 5 S.A.L.R. 130; *TRANter v. LORD*, 8 S.A.L.R. 81; *HUNTER v. PLAYER*, 9 S.A.L.R. 100. *Per Gwynne J.*: Under *The Real Property Act*, a term of less than three years cannot be registered; and, *semble*, cannot therefore be created. *MANNING v. CROSSMAN*, *ubi supra*.

[S.A., ACT OF 1861.]—Unregistered lease—Ejectment—Lease for two years.—In answer to an action of ejectment by a registered proprietor of land under *The Real Property Act*, the defendant relied on an outstanding lease for two years granted by the plaintiff, but any lease for less than three years being incapable of registration under the Act, this lease was not notified on the register. *Held* (following *Manning v. Crossman* 5 S.A.L.R. 130) that the plaintiff held the land free from all encumbrances not notified on the register, and was entitled to maintain ejectment. *BUCKETT v. KNOBBE*, 7 S.A.L.R. 147; *sed vide* S.C. 8 S.A.L.R. 86.

[VICTORIA, ACT OF 1866, s. 42, 75.]—Unregistered lease—Destroyed lease—Effect of.—The effect of s. 42 is not to render a lease which has not been registered void, but to make it of no effect against a subsequent registered conveyance

of the land. If registration becomes impossible owing to destruction of the lease, it is still valid as a contract between the parties. *MORRISSEY v. CLEMENTS*, 11 V.L.R. 13; 6 A.L.T. 107.

[VICTORIA, ACT OF 1866, s. 49.]—Unregistered lease—*Subsequent registered mortgage*.—A registered proprietor made a lease to defendant which was never registered. He afterwards executed a mortgage to plaintiff, which was duly registered. Possession was not demanded from the defendant, but he was asked to attorn tenant to plaintiff, which he refused to do. In an action of ejectment: *Held*, that defendant's possession as tenant of the mortgagor was not adverse to plaintiff's title, and his right to possession was preserved as being that of a tenant under the above section. *COLONIAL BANK OF AUSTRALIA v. RABARGE*, 5 V.L.R. (L.) 462.

[VICTORIA, ACT OF 1866, ss. 42, 75.]—Unregistered lease—*Local Government Act of 1874* (No. 506), s. 295—*Lease by Local Authority of land on which rates are in arrear*.—A lease under s. 295 of Act No. 506 is outside the provisions of *The Transfer of Land Statute* (No. 301), and, though not registered, binds lands held under that Act. A municipal council cannot give a lease under the Act, as it is not the registered proprietor, and therefore s. 42 of Act No. 301 does not apply. *KIRKHAM v. JULIAN*, 11 V.L.R. 171, 6 A.L.T. 253.

[Q., ACT OF 1861, s. 52; ACT OF 1877, ss. 18, 31.]—Unregistered lease—*Tenant from year to year*.—H. leased land under *The Real Property Acts of 1861 and 1877* to C. for upwards of three years by means of a lease not in the form E of the schedule to the Act of 1861. *Held*, that such lease was void under s. 52 of the Act of 1861, but that C. having entered and paid rent under the void lease he became a tenant from year to year, and that such tenancy was a demise within the meaning of s. 31 of the Act of 1877, so that when the buildings on the land were destroyed the rent was suspended until they were reinstated by the lessor. *HILL v. COX*, 1 Q.L.J. 78.

[VICTORIA, ACT OF 1890, s. 74.]—Unregistered lease—*Unpaid vendor in possession by agreement*.—An agreement according to which the vendor remains in possession of land under tenancy until the purchase money is paid, creates a tenancy within the meaning of s. 74 of *The Transfer of Land Act*, 1890, so that the title of the registered proprietor or that of a registered mortgagee from him is subject thereto. *COMMERCIAL BANK OF AUSTRALIA, LTD. v. MCGASKILL*, 23 V.L.R. 10; 18 A.L.T. 243; 3 A.L.R. 97. (Full Court.)

LIEN

Of vendor after register of transfer.
See TRANSFER.

LIFE ESTATE

Of husband in lands of his wife.
See HUSBAND AND WIFE.

LIGHT.

See BRINGING LAND UNDER ACT (C)
(b).
See EASEMENT.

LIMITATION OF ACTION.

See CERTIFICATE OF TITLE—(A) (1)
Powers of Registrar.

Assurance Fund.

See REMEDIES FOR DEPRIVATION—
Assurance Fund.

For dower.

See REMEDIES FOR DEPRIVATION—
Assurance Fund.

LIS PENDENS.

See CAVEAT AGAINST DEALINGS. (F)
(1).

LOCAL GOVERNMENT.

A lease by a local authority of land on which rates are in arrear need not be registered.

See LEASE.

KIRKHAM v. JULIAN, 11 V.L.R. 171;
6 A.L.T. 253.

MANDAMUS.

To Registrar

See CERTIFICATE OF TITLE—(A)
Cancellation.

See EASEMENT.

O'QUINN v. REGISTRAR OF TITLES, 1
Q.L.J. Supp. 7.

See REGISTRAR, DUTIES OF.

MUTUAL ASSURANCE SOCIETY OF VICTORIA v. REGISTRAR-GENERAL, 1 Q.L.J.
177.

See SALES BY SHERIFF.

MCGLONE v. REGISTRAR OF TITLES,
2 Q.L.J. 182. *PERKINS v. REGISTRAR OF TITLES*, 3 Q.L.J. 47.

MAORI.

See INFANT.

MAP.

See EVIDENCE.

MARRIED WOMAN.

Power to dispose of realty by will—
See TRANSMISSION.

MELBOURNE CORPORATION ACT.

Land subject to—Adjoining owners
See EASEMENT (B) (3)

MERGER.

Of claim for use and occupation in sublease—No plea of merger

See LEASE (A)

MUNRO AND BAILLIEU v. ADAMS, 17
V.L.R. 703.

"MESNE PROFITS."

See REMEDIES FOR DEPRIVATION.

METES AND BOUNDS.

Land sold by—Compensation for excess of estimated acreage.

See REMEDIES FOR DEPRIVATION.

MINING LEASE.

Certificate of title for

See CERTIFICATE OF TITLE—(B)
Conclusive effect.

MINISTER OF LANDS.

Consent of, unnecessary to withdrawal of application to bring land under Act.

IRELAND v. PAYNE, 28th November, 1882, Tas. Dig. col. 103.

MINISTERIAL DUTY.

Of Registrar

See REGISTRAR, DUTIES OF.

MISDESCRIPTION.

Of Boundaries

See BOUNDARIES.

See ERROR.

See REGISTRAR, DUTIES OF

See REMEDIES FOR DEPRIVATION.

Of land by execution creditors—Sale by Sheriff—Damages

See REMEDIES FOR DEPRIVATION.

MISFEASANCE.

Of Registrar

See REMEDIES FOR DEPRIVATION—
Assurance fund.

Of Registrar—Refusal to receive caveat

See CAVEAT AGAINST DEALINGS.

MISTAKE.

See ERROR.

See FRAUD.

MORTGAGE.

Moneys advanced, where payable

See PRACTICE—Jurisdiction.

Equitable mortgage—Insolvency of mortgagor

See BANKRUPTCY.

A mortgage executed by fraud in the name of a fictitious registered proprietor is invalid, and confers no interest on the mortgagee.

See CERTIFICATE OF TITLE—(B)
Conclusive effect.

GIBBS v. MESSEB, 1891 A.C. 248.

By way of transfer

See TRUSTS AND EQUITIES—Priorities.

Power of sale—Sale subject to contract for lease

See FRAUD.

THOMSON AND CHIPP v. FINLAY,
N.Z.L.R. 5 S.C. 203.

Discharge by trustees—Power of Registrar to inquire into authority of trustees

See REGISTRAR, DUTIES OF—Ministerial Duty.

Power of sale—Right of purchaser under, to bring land under Act

See BRINGING LAND UNDER ACT—Capacity.

In re DAVIS, 1 S.A.L.R. 67; In re BYGUM, 13 N.Z.L.R. 270.

Further advances—Caveat—Notice to mortgagee

See CAVEAT AGAINST DEALINGS.

Right of Registrar to inquire into intent of document tendered in proper form for registration

See REGISTRAR, DUTIES OF.

By company—Execution of—Affixing of seal—Registration

See REGISTRAR, DUTIES OF.

[VICTORIA, ACT OF 1866, s. 49.]—Unregistered lease—Subsequent registered mortgage.—A registered proprietor made a lease to defendant, which was never registered. He afterwards executed a mortgage to plaintiff, which was duly registered. Possession was not demanded from defendant, but he was asked to attorn tenant to plaintiff, which he refused to do. In an action of ejectment: Held, that defendant's possession as tenant of the mortgagor was not adverse to plaintiff's title, and his right of possession was preserved as being that of a tenant under the above section. COLONIAL BANK OF AUSTRALIA v. RABBAGE, 5 V.L.R. (L.) 462.

MORTGAGE.

A. EFFECT AND NATURE.

B. MORTGAGE TO BUILDING SOCIETY.

C. EQUITABLE MORTGAGES.

D. LEASEHOLDS.

E. COVENANTS.

F. POWERS AND REMEDIES OF MORTGAGEE.

1. Certificate of Title.

(See also SECOND MORTGAGE.)

2. Consolidation.

3. Distress.

4. Ejectment.

5. Fixtures.

6. Foreclosure.

7. Mortgagee in Possession.

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9. Miscellaneous.

G. POWERS AND RIGHTS OF MORTGAGOR.

1. *Legal Proceedings.*
2. *Release and Discharge.*
3. *Right to Redeem.*
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H. PRACTICE.

(See also FORECLOSURE.)

J. REGISTRATION.

(See also FORECLOSURE.)

K. SECOND MORTGAGE.

(See POWERS AND REMEDIES OF MORTGAGEE.)

L. TRANSFER OF MORTGAGED LAND.

A. EFFECT AND NATURE OF.

[VICTORIA, ACT OF 1866.]—Consideration *Evidence*.—A mortgage under the Act, though subsequently discharged, is not sufficient proof of the exact amount alleged to have been paid as the consideration of the mortgage. *HAYES v. WILSON*, 6 A.L.T. 249.

[Q., ACT OF 1861, s. 1.]—Construction of—*Repeal of inconsistent laws*.—The first section of the Act is an injunction not to apply the same rules of construction to mortgages, &c., under the Act as to mortgages at common law. *TRUST AND AGENCY CO. v. MARKWELL*, B.C.R., 16th March, 1874.

[N.S.W.]—Default—*Covenant to pay interest after default—Six months' notice or interest*.—By a mortgage under *The Real Property Act*, C. covenanted with the defendant bank that, if principal and interest at five per cent. were not paid by the 1st April, 1891, he would pay interest quarterly at the bank's current rate. *Held* (reversing the decision of Owen C.J. in Equity), that this covenant did not displace the ordinary rule that a mortgagor, on coming to pay off his mortgage after default, must give the mortgagee six months' notice, or pay six months' interest. *COPE v. TRUSTEES OF THE SAVINGS BANK OF NEW SOUTH WALES*, 14 N.S.W.L.R. (Eq.) 204. (Full Court.)

[VICTORIA.]—Defeasance—*Transfer—Money lent—Stamps Act, 1890 (No. 1140), ss. 71, 93, 100—Stamps Act, 1892 (No. 1274), s. 13—Stamps*.—A transfer of land, absolute in form, and purporting to be made in consideration of £800 lent, was executed by X. in favour of Y. A contemporaneous deed of defeasance was executed by the same parties. *Held*, that both documents should be looked at to see what the true nature of the transaction was, and that, as the transaction amounted to no more than a mortgage, the transfer was not dutiable under the *The Stamps Act, 1890 and 1892*. *Ex parte BALLARAT LAND MORTGAGE AND AGENCY CO. LTD.*, 17 A.L.T. 43.

[S.A., ACT OF 1861.]—Duplicate copies—*Registration of*.—Under *The Real Property Act, 1861*, a mortgage cannot be registered which has not been executed in duplicate. *In re SKERRETT*, 2 S.A.L.R. 21. (Full Court.)

[VICTORIA, ACT OF 1866, ss. 42, 84, 85.]—Registration—*Sale by mortgagee—Notice under s. 84*.—Land under the operation of the Act which is the subject of a mortgage, is not a "security" for the sum advanced while the mortgage remains unregistered. It must, therefore, be registered before the mortgagee can take

any steps to sell the land; and a notice under s. 84, in order to be valid, must be served after the registration of the mortgage. *MATHIESON v. MERCANTILE, & CO., LTD.*, 11 A.L.T. 154. (And see *post*, POWER OF SALE.) Overruled by Full Court, 17 V.L.R. 271, 12 A.L.T. 220. See F (8) *infra*.

B. MORTGAGE TO BUILDING SOCIETY.

See also *WILKIN v. DEANS*, 6 N.Z.L.R. 425, *Infra* (F) (2.)

[VICTORIA, ACT OF 1866, s. 106.]—Transfer with deed of defeasance—*Fi. fa.—Interest of mortgagor—Mortgage to Building Society*.—A parol contract for sale of land may be valid, although by reason of its not being in writing no action can be brought upon it, nor probably any action brought in which the establishment of the contract would be necessary to plaintiff's case. The creation of a quasi equity of redemption in land under *The Transfer of Land Statute* mortgaged to a building society by means of the execution by the mortgagor of a transfer absolute in form, and a deed of defeasance by the society, though opposed to the policy and intention of the Legislature, is not illegal, and the mortgagor's interest cannot be affected by any proceeding under s. 106 by a creditor having an execution against him. *Quære*, whether the Registrar of Titles can enter in the register book a copy of *fi. fa.* lodged under s. 106, when the estate or interest of the execution debtor nowhere appears in that book—as where it is merely an interest under deed of defeasance executed by a mortgagee, who has taken an absolute transfer of land under the statute as security? *WATSON v. ROYAL PERMANENT BUILDING SOCIETY*, 14 V.L.R. 288. *CF. SANDER v. TWIGG*, 13 V.L.R. 765; 9 A.L.T. 101, *infra sub SALES BY SHERIFF*.

C. EQUITABLE MORTGAGE.

[Q., ACT OF 1861.]—Deposit of Certificate of Title.—*The Real Property Act of 1861* does not invalidate equitable mortgages by deposit. *Re WILDASH AND HUTCHISON, Ex parte MISKIN*, 1 Q.L.R. (Pt. II.) 47. And see now Act of 1877, s. 30.

[S.A., ACT OF 1861.]—Deposit of certificate of title—*Real Property Act, 1861*.—An equitable mortgage may be created by the deposit of a certificate of title under *The Real Property Act, 1861*. *In re NATHAN*, 1 S.A.L.R. 166. (Full Court.) *RICHARD v. JONES*, 1 S.A.L.R. 167. (Full Court.)

[TAS., ACT OF 1862, s. 93.]—Deposit of certificate of title—*Priorities*.—The deposit of a certificate of title creates an equitable mortgage, being recognised by s. 93 of *The Real Property Act of 1862*, consequently such mortgage will take priority over a subsequent sale of the property by the sheriff. *In re BOSQUET*, 17 S.A.L.R. 173 followed. *In re BRADLEY*, December 2, 1889, Tas. Dig. col. 105.

[VICTORIA, ACT OF 1866, s. 130.]—Deposit of certificate of title.—Land under the Act may be equitably mortgaged by deposit of the certificate of title, the policy of the Act being to protect a transferee whose title is completed by the issue of a new certificate of title when it is issued, and not before. Section 130 of the Act seems to

recognise by implication such mortgages. *LONDON CHARTERED BANK v. HAYES*, 2 V.R. (Eq.) 104; 2 A.J.R. 60.

[VICTORIA, ACT OF 1866, ss. 106, 132.]—Deposit of certificate of title—*Issued in error*—*Right of mortgagee to retain title*—*Summons by Registrar to compel mortgagee to deliver up title*.—A. issued a writ of *fi. fa.* against M., the registered proprietor of land under two Crown leases, and in the copy *fi. fa.* served on the Registrar specified this land as the land sought to be affected. Before the expiration of the time allowed by s. 106 for sale by the sheriff and the registration of the transfer (three months), A. served an *alias* writ of *fi. fa.*, under which the land was sold to P., to whom transfers were executed by the sheriff. Before the date of the sheriff's sale M. had transferred the land to B., a purchaser for value. B. obtained certificates, and pledged them with S. as security for an advance. S. presented his transfers for registration, and on application to the Supreme Court the Registrar was ordered to register them. The Registrar then applied for an order directing S. to give up the certificates of title held by him. *Held*, that, in the absence of fraud, S. was entitled to retain the certificates until the advance was paid off. *Ex parte PATERSON*, 4 A.J.R. 110. (Full Court.) See also, *REGISTRAR OF TITLES v. PATERSON*, 2 App. Cas. 110 *infra* sub SALES BY SHERIFF.

[VICTORIA, ACT OF 1866.]—Deposit of certificate of title—*Depositor's interest*.—A person depositing as a security a certificate of title in the name of a third party gives to the depositee only such right as the depositor has against the registered proprietor. *PLUMPTON v. PLUMPTON*, 11 V.L.R. 733.

[VICTORIA, ACT OF 1890, s. 139.]—Deposit of title deeds—*Priorities*—*Sale by Sheriff*—*Parol Agreement*—*Instruments Act*, 1890 (No. 1103), s. 208—*Lodgment of fi. fa.*—J. verbally agreed with the plaintiff bank to lodge as security for an overdraft a lease of lands when issued, and gave the plaintiff an order on the Lands Department to receive such lease. The agreement was made on the 24th April, 1891. J. was entitled to the lease on 1st April, 1891. The lease was approved of by the Lands Department in December, 1891. The lease was executed on the 16th June, 1892, and was forwarded by the Lands Department to the Registrar of Titles on 20th June, 1892, and was enrolled and registered at half-past 9 on 21st June, and returned to the Lands Department on the morning of the 22nd June, when it was handed to the plaintiff by the Lands Department on the faith of the order of 24th April, 1891. The Lands Department received notice of the order on the 7th June, 1892. J. was sued in March, 1892, and judgment was obtained against him, and a writ of *fi. fa.* was issued, copy of which writ, and the necessary statement, were lodged with the Registrar of Titles on the 21st June, 1892, at half-past 1 p.m. The sheriff sold the land comprised in the lease on the 15th July, 1892, and the defendant bought the land, and applied to have the transfer from the sheriff to him registered. The plaintiffs brought an action to restrain the registration, except subject to the equitable mortgage created by the agreement and the subsequent deposit of the deed. *Held*, that the verbal agreement, together with the written

order, did not constitute an equitable mortgage. *Held*, also, that the lodgment of the copy writ of *fi. fa.* on 21st June prevented the deposit of the deed on the 22nd June with the plaintiff binding the land or creating any equity against a purchaser from the sheriff. To create an equitable mortgage there must be either a memorandum in writing showing intention to create the same, or an actual deposit of title deeds. *COLONIAL BANK OF AUSTRALASIA v. RIDDELL*, 19 V.L.R. 280. *Per* Holroyd J.: An equitable mortgage may be registered as an encumbrance.

[Q., ACT OF 1861, ss. 77, 79.]—Deposit of nomination of trustees.—The deposit of a nomination of trustees creates an equitable mortgage. *BURRELL v. HOPE*, B.C.R., 15th August, 1871.

[VICTORIA, ACT OF 1866.]—Lien on certificate of title.—*Quære*, whether any right of lien can be acquired on a certificate of title? *SWAN v. SEAL*, 10 V.L.R. (Eq.) 57, 66; 5 A.L.T. 196.

[VICTORIA, ACT OF 1866, s. 106.]—Trusts and equities—*Sheriff's sale*—*Mortgage*—*Priority*.—F., the registered proprietor of land, deposited his Crown grant with the plaintiff by way of equitable mortgage. Shortly afterwards, a creditor obtained judgment against F., and duly lodged a copy writ of *fi. fa.* against the land. The plaintiff, ten days afterwards, obtained a mortgage under the Act from F., and lodged a caveat, and served notice of his claim on the sheriff; but the Registrar refused to register his transfer. In an action between the parties: *Held*, that the defendant had obtained priority. *PATCHELL v. MAUNSELL*, 7 V.L.R. (Eq.) 6.

[N.S.W., ACT OF 1862, ss. 92, 111.]—Unregistered mortgage—*Sale by Sheriff*—*Caveat*—*Notice*.—B., the registered proprietor of two allotments of land, deposited the certificates of title with a bank to secure advances, and executed a memorandum of mortgage of one of the allotments, which mortgage was not registered. Subsequently, a writ of execution against B. was registered, and the sheriff sold to E. all B.'s right, title, and interest in the allotments. At the time of the registration of the writ no encumbrances on the land appeared on the register. E. having made application to have the transfer from the sheriff to him registered, the bank lodged a caveat. E. then moved to have the caveat removed from the title. *Held*, that all that E. obtained by his purchase from the sheriff was B.'s right, title, and interest, and that the transfer not being from a registered proprietor, s. 111 of *The Real Property Act* did not apply. *Re ELLIOTT*, 7 N.S.W.L.R. (L.) 271. (Full Court.)

[Q., ACT OF 1861.]—Unregistered instrument.—An equitable mortgagee in Queensland who has not registered his assignment or security is in the same position as an equitable mortgagee in England who has not completed his security by foreclosure. *NAUMBERG v. ALBERTSON*, EXECUTORS OF, 3 Q.L.J. 125.

[VICTORIA, ACT OF 1866 (No. 301) s. 106.]—Unregistered mortgage—*Sale by sheriff*—*Priority*.—Under s. 106 a purchaser of land at the sheriff's sale, under a writ of *fi. fa.*, does not become the transferee, nor is he to be deemed the proprietor thereof until such transfer is entered by the Registrar in the register book. The sale under the writ does not necessarily exclude the rights

of an unregistered equitable mortgagee whose right has accrued before service of a copy of the writ of *fi. fa.* upon the Registrar. *NATIONAL BANK v. MORROW*, 13 V.L.R. 2; 8 A.L.T. 145. (Full Court.)

D. LEASEHOLDS.

[N.Z., Act of 1870.]—Assignment—Charge on benefit of covenant.—A mortgage of leaseholds under *The Land Transfer Act*, 1870, gives, without any special assignment, a charge upon the benefit of a covenant running with the land contained in the lease, which the mortgagor cannot subsequently defeat. *OFFICIAL ASSIGNEE OF DUNBAR v. DEAL AND MANNING*, 7 N.Z.L.R. 9. (Court of Appeal.)

[N.Z., Act of 1885, ss. 93 *et seq.*]—Lease under Crown Lands Act—Right to possession.—A mortgage under *The Land Transfer Act*, 1885, of a lease under *The Land Act*, 1885, is not a transfer of the possession or occupation of the land leased within the meaning of s. 65 of the last-mentioned Act, and does not, therefore, require the sanction of the Land Board. *Semble*, that a mortgage under *The Land Transfer Act*, 1885, does not of itself confer on the mortgagee a right to possession of the land mortgaged. *KING v. STUART*, N.Z.L.R. 5 S.C. 304.

[N.Z., Act of 1885, s. 113.]—Mortgagee in possession—Liability for rent under Land Transfer Act, 1885, s. 113—Undivided share—Apportionment.—A mortgagee of leasehold land under the provisions of *The Land Transfer Acts* who takes actual physical possession of the land, is liable for the whole rent to the same extent as the original lessee. Mortgagees of an undivided share of the land who take possession are liable for a proportionate part only; their possession being referred to the interest mortgaged. *NATIONAL MORTGAGE AND AGENCY CO. OF NEW ZEALAND (LTD.) v. MAYOR & CO. OF KAIAPOI*, 7 N.Z.L.R. 231. (Court of Appeal.)

E. COVENANTS.

See also *STAPLES v. MACKAY*, 11 N.Z.L.R. 258. G. (2) *infra*.

[N.S.W., Act of 1862, s. 54, *et seq.*]—Personal promise.—Plaintiff sued upon a covenant for repayment of principal and interest in what purported to be a memorandum of mortgage under the Act. Defendant pleaded that it was not a memorandum of mortgage under the Act, and that he was not the registered proprietor. *Held*, on demurrer, that, even so, defendant still remained liable on his personal promise to pay. *MERCANTILE BUILDING CO. v. MURPHY*, 4 W.N. (N.S.W.) 105. (Full Court.)

[N.Z., Act of 1870.]—Whether benefit of covenant charged.—The right to sue on a covenant by a lessor to pay, "at the expiration or sooner determination" of the term, for any buildings which the lessee might, during the term, erect, is not defeated by re-entry or forfeiture before the expiration of the term. The benefit of such a covenant runs with the land, assigns being named, and the lessee having built in order to keep a publican's license in force, which he was bound to do by the terms of the lease. A mortgage of leaseholds, under *The Land Transfer Act*, 1870, gives, without any special assignment, a charge upon the benefit of such a covenant contained in the lease, which

the mortgagor cannot subsequently defeat. *DUNBAR'S OFFICIAL ASSIGNEE v. DEAL AND MANNING*, 7 N.Z.L.R. 9. (Full Court.)

F. POWERS AND REMEDIES OF MORTGAGEE.

1. Certificate of Title.

(See also SECOND MORTGAGE.)

[Q., Acts of 1861 and 1877.]—Custody of—Second mortgage.—Under *The Real Property Acts* of 1861 and 1877, the mortgagee is not entitled to the certificate of title, and the registered proprietor can execute a second mortgage, although he might not be in possession of the certificate. *CLARKSON v. MUTUAL LIFE ASSOCIATION OF AUSTRALASIA*, B.C.R., 2nd April, 1879.

[VICTORIA, Act of 1890 (No. 1136), ss. 85, 86, 134.]—Custody of—Default of mortgagor—Summons for production of certificate of title to purchaser.—A mortgaged land to B, and by a covenant in the mortgage A. provided that B. should have the custody of the certificate of title. A. transferred the land to C., who applied to B. to produce the certificate of title for the purpose of having his transfer registered thereon. B. refused to produce the document on the ground that A., the mortgagor, was in default, and quoted the covenant. C. took out a summons, under s. 86 of *The Transfer of Land Act*, 1890, calling upon B. to produce the certificate of title. *Held*, that the provisions of s. 134 of *The Transfer of Land Act*, 1890, overrode the covenant in the mortgage, and that, in the absence of special circumstances, the mortgagee must produce the certificate of title. Where there has been default by the mortgagor, and, in consequence of that default, an immediate sale is contemplated, and for the purpose of such sale the control of the certificate of title by the mortgagee is necessary, the judge will recognise the rights of such mortgagee, and will refuse to make an order compelling him to produce the certificate of title under s. 89. *Re ARMITAGE, Ex parte ANDREWS*, 17 V.L.R. 77, 12 A.L.T. 164.

[N.Z.]—Registration of second mortgage—Production Fee.—A first mortgagee, on application by a second mortgagee to produce and deposit the certificate of title to permit of the second mortgage being registered, is entitled to charge such fee only as shall recompense him for his trouble. If the certificate is already in the Registry Office, no such fee is payable, and the Registrar is bound to register the second mortgage. *In re WRIGHT*, 12 N.Z.L.R. 585.

(2.) Consolidation.

[N.Z., Acts of 1870 and 1885.]—No power of—Incorporation of rules of society.—There is no right of consolidation of mortgages under *The Land Transfer Acts* of 1870 and 1885. A mortgagor covenanted to observe all the rules of a loan society: *Held*, that these rules were not incorporated in the mortgage. *WILKIN v. DEANS*, 6 N.Z.L.R. 425.

[VICTORIA, Act of 1866, ss. 98, 99.]—No power of—Method of foreclosure under the Victorian statute.—L. was registered proprietor of land under the Act, and also owner of land not under the Act. Both pieces of land were mortgaged to defendant. The land under the Act, subject to the mortgage, be-

came vested by transfer in plaintiff as registered proprietor. Defendant claimed the right of consolidating the two mortgages as against plaintiff. *Held*, that he was not entitled to do so. *GREIG v. WATSON*, 7 V.L.R. (Eq.) 79; 3 A.L.T. 13.

(3) Distress.

[N.Z., Act of 1885, ss. 93, *et seq.*].—Attornment clause—*Tenancy by estoppel*—*Distress on goods of third person*.—A clause in a memorandum of mortgage under *The Land Transfer Act*, 1885, whereby the mortgagor attorns tenant to the mortgagee, creates no tenancy except by estoppel, and therefore, as third persons are not bound by the estoppel, their goods on the premises are not liable for distress for rent due to the mortgagee. *Semble*, such an attornment clause creates a tenancy by estoppel as between the mortgagor and mortgagee. *JELICOE v. WELLINGTON LOAN COMPANY*, N.Z.L.R. 4 S.C. 330.

[VICTORIA, Act of 1890, ss. 120, 124].—Mortgagor in possession. — “Occupier,” meaning of, in s. 120. A mortgagee may, under s. 120 of the Act of 1890, distrain for arrears of interest on the goods and chattels of a mortgagor in possession. The word “occupier,” in the first part of s. 120 is general, and includes a mortgagor in possession, but “occupier” in the proviso to the section includes an occupier from whom there is something due to the mortgagor in possession, but not the mortgagor himself. *MCLEISH v. FORREST*, 21 V.L.R. 385. (Full Court.)

[N.Z., Act of 1870, s. 62; Act of 1885, s. 96; Act of 1888, s. 7].—Tenant or occupier—*Bankruptcy*—*Instrument giving powers conferred by Land Transfer Act*, 1870, and *Amending Acts*—*Whether power conferred by* s. 96 of “*The Land Transfer Act of 1885*” included.—A mortgagor in possession is not a tenant or occupier within the meaning of s. 62 of the Act of 1870. *Semble*, Where a mortgage empowers the mortgagee to exercise “the powers of sale and all other powers conferred on a mortgagee by *The Land Transfer Act*, 1870, or any Act or Acts amending the same for default in payment of the principal or interest secured by memorandum of mortgage,” the mortgagee is clothed with the right of distraint conferred by s. 96 of *The Land Transfer Act of 1885*. Where the interest of a mortgagor in land, and his property in the goods thereon, have been assigned by bankruptcy or otherwise, such goods are not liable to be distrained upon under s. 96, unless and until the assignee has become the registered transferee of the mortgagor. *Quære*, whether such goods in the possession of the official assignee would be liable to distraint even after registration? *In re ROSS and MCNEIL*, N.Z.L.R. 5 S.C. 322. [N.B.—The mortgagee’s right to distrain on goods given by s. 96 of the Act of 1885 was taken away by s. 7 of *The Amending Act of 1888*.]

[Q., Act of 1861.]—Tenant or occupier—*Husband living with his wife on land the property of the wife*—25 Vic., No. 14, s. 61.—A husband living with his wife on land the property of the wife is not an occupier or tenant of the land within the meaning of s. 61 of 25 Vic., No. 14, and his goods on the land cannot be levied upon in respect of moneys due by the wife under a mortgage of the land. *TRANTWEILER v. FEDERAL BUILDING, LAND AND INVESTMENT CO., LIMITED*, 7 Q.L.J. (N.C.) 78; see *MCLEISH v. FORREST*, *supra*.

[S.A., Act of 1861, s. 57].—Tenant or Occupier.—A mortgagor in possession is not a tenant or occupier within the meaning of the above section. *HART v. STRATTON*, 7 S.A.L.R. 84. (Full Court.) See *vide MCLEISH v. FORREST*, *supra*.

(4) Ejectment.

[Q., Act of 1861, s. 60].—The words of the above section are general and unrestricted. *DEKKERS v. MERRY*, B.C.R., 13th March, 1872. (Full Court.)

[VICTORIA].—County Court—Plaint as by mortgagee—*Certificate of title and defeasance*—*Building society*.—A County Court plaintiff in ejectment for land under *The Transfer of Land Statute*, stated the title as of a mortgagee in fee. At the hearing the plaintiff put in a deed of defeasance, reciting a transfer of even date, and a certificate of title of subsequent date. *Held*, that it sufficiently appeared that the plaintiff was suing as mortgagee; that any document which showed that the defendant had a general right to redeem, should be deemed a mortgage. *DELANEY v. SANDBURST BENEFIT BUILDING AND INVESTMENT SOCIETY*, 5 V.L.R. (L.) 189. (Full Court.)

[S.A., Act of 1861].—Default by mortgagor.—Though a mortgagee has no legal estate under *The Real Property Act*, 1861, yet, where on default a transfer to him has been endorsed on the mortgagor’s certificate of title, the Court will accept such an entry as conclusive evidence of the mortgagee’s title to possession, and will permit him to maintain ejectment. *JONES v. SELICK*, 6 S.A.L.R. 13. (Full Court.)

[VICTORIA, Act of 1866, ss. 84 *et seq.*, 93].—Demand of possession.—Section 93 of the Act confers on a first mortgagee, in addition to the rights and powers given to him by ss. 84-91, the same rights and remedies to which he would have been entitled as owner of the legal estate under the old law, coupled only with a right in the mortgagor of quiet enjoyment until default. Unless this right amounts to a re-demise to the mortgagor (which, at least where no time is fixed by the mortgagee for payment of the money thereby secured, it does not do), the mortgagor is only a tenant at sufferance, and may be ejected by the mortgagee without any demand having been made for payment. If no time is fixed for payment the mortgagor has only a right of action for breach of his right to quiet enjoyment. *Semble*, per Holroyd J. (*dubitante Curia*): If a time is fixed by the mortgagee for payment of the money secured, the right of quiet enjoyment given by s. 93 amounts to a re-demise. *COMMERCIAL BANK v. BREEN*, 15 V.L.R. 572; 11 A.L.T. 92. (Full Court.)

[VICTORIA, Act of 1866, No. 301, s. 49].—Mortgagor tenant of mortgagee—*Demand of possession*—*Adverse possession*—*Tenancy previous to mortgage*.—The possession of a tenant of a mortgagor under a tenancy created prior to the mortgage is not adverse to the title of the mortgagee. The tenant is not obliged voluntarily to attorn to the mortgagee, and cannot be ejected by the latter without a previous demand of possession. *THE COLONIAL BANK OF AUSTRALASIA v. RABBAGE*, 5 V.L.R. (L.) 462. (Full Court.)

[VICTORIA].—Mortgagor tenant of mortgagee—*Notice determining tenancy*—*Supreme Court Rules*—O. III., r. 6.—When a mortgagor

has in the mortgage deed attorned as tenant to the mortgagee, a specially endorsed writ may be issued by the mortgagee for the recovery of the land mortgaged, on the due determination of such tenancy. [*Farrington v. Smith*, 20 V.L.R. 90; 15 A.L.T. 218 *infra* followed.] A mortgagee, to whom the mortgagor has attorned as tenant, cannot proceed to eject a person holding under the mortgagor until the mortgagee has duly determined the tenancy by notice, as provided in the instrument of mortgage. *CROSTHWAITE v. HOPKINS*, 1 A.L.R. 88.

[VICTORIA, ACT OF 1890, s. 124.]—Summary ejectment by mortgagee—*Rules of the Supreme Court*, 1884—O. III., r. 6—O. XIV., r. 1—*Position of mortgagor in default*—*Landlord and Tenant*—*Tenancy of mortgagor*—*Right of re-entry*.—The words in s. 124 of *The Transfer of Land Act*, 1890, "with a right in the mortgagor of quiet enjoyment of the mortgaged land until default in payment of the principal and interest money secured, or some part thereof respectively," are, when a time is fixed by an instrument of mortgage for payment of the principal, to be construed as a redemise to the mortgagor for a period terminating at the time fixed, subject to the re-entry of the mortgagee in case of default. *Held*, therefore, inasmuch as O. III. r. 6, allows a writ to be specially endorsed in an action by a landlord for recovery of land against a tenant whose term has expired or been duly determined by notice to quit, that when a mortgagor of land under *The Transfer of Land Act* has covenanted with the mortgagee for payment of the principal at a fixed date, and makes default, the mortgagee can after that date proceed summarily by O. XIV., r. 1 to recover possession of the land from the mortgagor, although the mortgagor has not expressly attorned tenant to the mortgagee. *FARRINGTON v. SMITH*, 20 V.L.R. 90; 15 A.L.T. 218. (Full Court.)

[VICTORIA, ACT OF 1890, s. 74.]—Unregistered lease—*Unpaid vendor in possession by agreement*.—An agreement according to which the vendor remains in possession of land under tenancy until the purchase money is paid, creates a tenancy within the meaning of s. 74 of *The Transfer of Land Act*, 1890, so that the title of the registered proprietor or that of a registered mortgagee from him is subject thereto. *COMMERCIAL BANK OF AUSTRALIA, LTD. v. MCGASKILL*, 23 V.L.R. 10; 18 A.L.T. 243; 3 A.L.R. 97. (Full Court.)

5. Fixtures.

[VICTORIA, ACT OF 1866, s. 50.]—Where not annexed to land not included in the mortgage.—The plaintiffs let certain machinery to B. under an agreement whereby the machinery was to be paid for by quarterly instalments, and was not to become the property of B. until all the instalments had been paid, but the same should remain the property of the plaintiffs. The machinery was all connected and used together. The brick bed of the engine and the containing-wall of the boiler were firmly embedded in the ground. There would, however, have been no difficulty in disconnecting either the boiler or the engine from the brickwork to which it was fastened without injuring the brickwork in any way. The machinery was protected by a shed erected only for that purpose, and which was of a very flimsy structure. The

roof of the shed was put on by B. after the machinery had been placed in position. In the course of the work some bricks were built over the front of the boiler and a wallplate to support the roof was rested upon them. The effect was that the boiler could not be removed without taking off the roof and displacing some of the bricks, or taking out one end of the containing-wall and one end of the shed. *Held*, that the machinery had not become part of B.'s freehold. C., who was the defendant in an action brought by plaintiffs to recover the machinery, advanced money to B. under a mortgage, whereby it was provided that the money advanced thereunder should be applied in the first place to the payment of the balance which might be due from the mortgagor to any person or persons to whom any sums of money were then owing in respect of any plant or machinery then upon the ground, or other things of a like nature then upon the land thereby mortgaged and purchased by the mortgagors on credit or time payment, or until further payment remaining the property of the persons supplying the same upon agreements for letting and hiring, and that all plant and machinery sunk into or erected on the land mortgaged should for the purpose of that security be deemed to belong to and form part of the property thereby mortgaged as part of the freehold. The defendant C. knew of the existence of the letting and hiring agreement between plaintiff and B. and knew the nature of such agreement, and the defendant's manager was furnished by B. with a list of all the persons to whom B. was then indebted, including the plaintiffs. The money was duly advanced under the mortgage, B. having the full control thereof and the defendant not taking care to see that plaintiffs were paid. In an action brought by the plaintiffs to recover the machinery and to have it declared that the machinery was not included in the mortgage: *Held*, that s. 50 of *The Transfer of Land Statute* did not bar the plaintiff's claim, and that the machinery was not included in the mortgage, as it did not form part of the land mortgaged. *AUSTRAL OTIS ELEVATOR CO. v. ANDREW KERR AND CO., LTD.*, 16 V.L.R. 744.

6. Foreclosure.

[VICTORIA, ACT OF 1890.]—Mortgage of land under general law—Land subsequently brought under the Act.—Where land not under the Act is mortgaged and the land is subsequently brought under *The Transfer of Land Act*, the mortgagee cannot obtain a foreclosure under s. 129 of *The Transfer of Land Act*, 1890. *In re SMITH*, 15 A.L.T. 85. (Full Court.)

[VICTORIA, ACT OF 1890, ss. 114, 116, 129, 130, 131, 133, 186, 193.]—Mortgagee who is executor of mortgagor—*Application for foreclosure order*—*Functions of Commissioner of Titles*—*Ground for refusal of order*—*Trustee company*.—On an application by a mortgagee to the Commissioner of Titles for an order for foreclosure, that officer has not only ministerial but also judicial functions to perform, in the performance of which he must be guided by the rules of equity, so far as *The Transfer of Land Act* permits. An executor who is also mortgagee of land of his testator, which is under *The Transfer of Land Act*, is not entitled to an order for foreclosure. This principle applies also to a trustee

company to which land of the testator has been mortgaged, and which has afterwards been appointed to act as executor, but has neglected to constitute itself proprietor of the land under s. 113 of *The Transfer of Land Act*. *TENNANT v. TRENCHARD*, L.R. 4 Ch. 537 followed, *Ex parte CAMPBELL*, 9 A.L.T. 183, distinguished. *Ex parte NATIONAL TRUSTEES, EXECUTORS AND AGENCY COY. OF AUSTRALIA LTD.*, 19 A.L.T. 222. (Full Court.)

[N.S.W., ACT of 1862, ss. 55, 113.]—Procedure.—A mortgage of land under the Acts operates as a security only, not as a transfer, and a decree of foreclosure would therefore be inoperative. The mortgagee must proceed under s. 113 of the Act. *LONG v. TOWN*, 10 N.S.W.L.R. (Eq.) 253.

[Q., ACT of 1861, ss. 57, 60.]—Redemption.—The differences between a statutory mortgage and an ordinary mortgage, with the remedies in Equity, discussed. *TRUST AND AGENCY Co. v. MARKWELL*, B.C.R. 16th March, 1874. (Full Court.)

[Q., ACT of 1861, s. 60.]—Registrar—Form of order.—On a motion for judgment for foreclosure in the case of a mortgage of land under the Real Property Acts, a declaration will not be made that, in default of payment within a certain time of the amount certified by the Registrar, the plaintiff is entitled to be registered as proprietor of the mortgaged lands. The plaintiff should, after the prescribed time, apply to the Registrar for registration, and if registration is then refused he has his remedy. *BRITISH, &c., Co. v. SOUTH QUEENSLAND PASTORATE Co.*, 6 Q.L.J. 83.

[Q.]—Registration in Real Property office of mortgagee's title after foreclosure decree—*Vesting order*.—A judgment for foreclosure of land subject to the Real Property Acts does not authorise the Registrar of Titles to register the mortgagee as owner of an estate in fee of the mortgaged land without a vesting order or a transfer from the mortgagor. *WILSON v. BROWN*, 7 Q.L.J. 16.

[N.S.W., REAL PROPERTY ACT, ss. 40, 114.]—Re-opening of foreclosure.—Where the formalities prescribed by *The Real Property Act* for the foreclosure of a mortgage under the Act have been complied with, and there has been no fraud, the Court has no power to re-open the foreclosure. *CAMPBELL v. BANK OF NEW SOUTH WALES*, 16 N.S.W.L.R. (Eq.) 285. (Full Court.)

7. Mortgagee in possession.

[VICTORIA, ACT of 1890, s. 122.]—Attornment clause—*Two mortgages*—*Second mortgagee in possession*—*Liability to first mortgagee*.—The plaintiffs were registered proprietors of a first mortgage, bearing date March, 1892, with powers of sale, of entering into possession, and of leasing on failure of the mortgagor to perform the covenants of the mortgage. The mortgage contained a clause by which the mortgagor attorned tenant from year to year to the plaintiffs and agreed to pay rent in lieu of interest. On April 29, 1892, the mortgagor gave a second mortgage to the defendants; about March, 1894, the defendant went into possession of the mortgaged property, and up to September 4, 1896, paid the

plaintiffs interest and rent payable under the mortgage. The defendant retained possession after that date till December 4th, 1896, but refused to pay any more rent or interest. *Held*, that the defendants were not liable to pay rent to the plaintiffs, as they were not in possession as tenants to the plaintiffs, but as mortgagees in possession when the amount sued for as rent became due. Section 122 of *The Transfer of Land Act* did not apply. *GREY v. NEW ZEALAND LOAN, MORTGAGE AND AGENCY Co.*, 3 A.L.R. (C.N.) 38.

[Q., ACT of 1861, s. 60.]—Effect of being in possession.—A mortgagee who obtains possession under s. 60 is still only a mortgagee in possession. *OLKERS v. MERRY*, B.C.R., 6th March, 1872.

8. Power of sale

[VICTORIA, ACT of 1890, ss. 114 *et seq.*]—Breach of covenant—*Particular covenant to be specified*.—*The Transfer of Land Act*, 1890 (No. 1149) requires the mortgagee who claims to be entitled to exercise his power of sale for non-performance of a particular covenant alleged to have been broken, to specify the particular covenant alleged to have been broken. It is not sufficient that he should call upon the mortgagor to perform "all the covenants" or "the covenants" generally. *STACEY v. HANSEN*, 20 V.L.R. 561.

[VICTORIA, ACT of 1866, s. 85.]—Combining land under Act with land not under Act—*Mortgage to a Building Society*.—A mortgaged to a building society lands under *The Transfer of Land Statute*, and also lands not under the Act. On default the several pieces of land belonging to the mortgagor were sold in one lot and for one price. *Held*, that there being a great difference in the manner of disposing of the proceeds of land mortgaged under the Act, and land not under the Act, and the Act containing special clauses as to payment of the purchase-money and as to title, it was improper to combine the several pieces of land in one sale. *Quære*, whether the protection given by s. 85 to a purchaser from a mortgagee extends to a person having only a contract of purchase (*M'DONALD v. ROWE*, *infra*, *doubted*). *ROSS v. VICTORIAN PERMANENT BUILDING SOCIETY*, 8 V.L.R. (Eq.) 254; 4 A.L.T. 17.

[VICTORIA, ACT of 1866, ss. 42, 84, 85.]—Demand and notice of sale given prior to registration.—*Effect of registration*.—Instruments executed in the form provided by *The Transfer of Land Statute* (No. 301) are not, previous to registration, void of all effect except as to conveying, passing, or conferring estates or interests and rights in land. They may, before registration, have effect as contracts between the parties to them, or operate as securities springing from the contract from the date of signing; and acts done by the parties under and in accordance with the contracts before registration may, as between the parties, be valid and effectual. A mortgage in the form provided by *The Transfer of Land Statute* (No. 301) contained a covenant that in case default should be made in payment of any of the moneys expressed or intended to be thereby secured, and such default should be continued for the space of three days, then all the moneys intended to be thereby secured should immediately become payable and recoverable, and

it should be lawful for the mortgagee to serve on the mortgagor the notice mentioned in s. 34. of the Act; and on such default in payment continuing for the further space of three days after the service of such notice, it should be lawful for the mortgagee to exercise the power of sale mentioned in s. 85 of the Act. The mortgage was not registered for some time after its execution, and in the meantime default in payment was made and continued, and a demand of payment and notice of intention to exercise the power of sale were given. *Held*, that the demand of payment and notice of sale before registration of the mortgage were valid and effectual to authorise a sale after registration under s. 85. The word "secured" in s. 84 of *The Transfer of Land Statute* (No. 301) refers both to the security created by the covenant to pay the principal and interest contained in a mortgage deed and in force between the parties before its registration, and also to the security in respect of the land itself, which comes into existence only when the deed is registered. *MATHIESON v. MERCANTILE, FINANCE, AND AGENCY COMPANY, LTD.*, 17 V.L.R. 271, 12 A.L.T. 220. (Full Court.) Overruling decision of Webb J., 11 A.L.T. 154 *supra*.

[N.S.W., Act of 1862, s. 55.]—*Notice—Tender of amount due—Claim of excessive amount—Dispensation of tender.*—The defendant bank, being mortgagees, demanded under s. 55 of *The Real Property Act* from the plaintiff, the mortgagor, the sum of £20,029 8s. 3d. as being due under the mortgage. Plaintiff acknowledged receipt of notice, but denied indebtedness to a greater extent than £4500. The defendants exercised their power of sale, for which plaintiff sued them and recovered £3000 damages. *Held*, on the facts of the case (*affirming* N.S.W. Supreme Court), that there had been no dispensation by the defendants with a tender by the plaintiff of the amount actually due, assuming that the amount claimed was excessive. *Held also*, that a demand of more than was due did not vitiate the notice under s. 55, or excuse a mortgagor from the necessity of tendering. A demand by a mortgagee of too large an amount, unless it be so much and so made as to amount to an announcement that it will be useless to tender any smaller amount, will not be a dispensation with tender by the mortgagor of the proper sum. *Held also* (*reversing* the decision of the Supreme Court), that if there had been a dispensation of tender, the plaintiff could in the present case have recovered no damages, as he had by agreement with the mortgagees (which was not pleaded) parted with his equity of redemption. *CAMPBELL v. COMMERCIAL BANKING CO. OF SYDNEY*, (P.C.) 2 N.S.W.L.R. 375; 2 N.S.W.L.R. 389. (Full Court.)

[N.Z., Act of 1870, s. 59.]—*Notice dispensed with by agreement—Agreement to lease by mortgagee with a compulsory purchasing clause—Notice.*—A stipulation in a mortgage that upon default a mortgagee may sell at once, without giving any notice or waiting any further period whatever, gives the mortgagee the right to sell without giving any notice to the mortgagor, notwithstanding the provisions as to notice contained in s. 59 of *The Transfer of Land Act*, 1870. An agreement to lease by the mortgagee, with a compulsory purchasing clause within a given time, is a valid exercise of such power of

sale, and the mortgagor will not be entitled to the enhanced value (if any) of the land between the time of the execution of the lease and the payment of the purchase-money. All he can claim is to be credited with the amount of the purchase-money as from the date of the execution of the agreement. *PUBLIC TRUSTEE v. MORRISON*, 12 N.Z.L.R. 423.

[VICTORIA, ACT OF 1866, ss. 84, 85.]—*Notice of sale—Form of—Notice given by unregistered letter sufficient—Notice defective through uncertainty of its terms—Protection of innocent purchaser at sale after such notice by mortgagor.*—This was a suit claiming an injunction against the mortgagees to prevent them selling mortgaged land, and against a purchaser of part of the land to prevent him registering a transfer. The mortgage provided for giving notice of sale in case default in payment continued for seven days after service of notice. Interest being in arrear, notice was sent by letter (not registered, as required by s. 84) to the effect that the land would be sold, "unless the money due under the mortgage be forthwith paid." Part of the land had been sold, and the defendants were proceeding to sell the rest. *Held*, upon motion in the suit, that as the unregistered letter had reached plaintiff, the notice contained in it was sufficient in point of form; but the notice was defective (1) Because it did not show whether the mortgagees demanded payment of both principal and interest only; (2) Because it required payment "forthwith," and not within seven days after giving the notice. An injunction was therefore granted against the mortgagees until they had given the required notice, but refused as against the purchaser, he being a purchaser for value without notice of any defect in the sale protected by the last clause of s. 85, which extends to protect contracts as well as transfers registered under the Act where contractors knew nothing at the time of sale to impugn its validity. *Held further* (*at the hearing*), that the plaintiff was entitled at his option to charge the defendant mortgagees with the value of the land at the time of the sale or at the time of the decree. *McDONALD v. ROWE*, 3 A.L.J. 90; 4 A.J.R. 134. *Sed vide* *ROSS v. VICTORIA PERMANENT BUILDING SOCIETY*, *supra*.

[S.A., Act of 1861, s. 52.]—*No notice of sale under mortgage—Bona fide purchaser protected.*—A mortgage of land under *The Real Property Act*, 1861, provided that it should be lawful for the mortgagee to sell the mortgaged land on default without serving the mortgagor with any written demand for payment. A subsequent clause provided that "all notices which by virtue of *The Real Property Act*, 1861, whether in respect of the payment of any money or otherwise, would require to be served by the said mortgagee on me at my last known or usual place of abode in the province, shall be deemed to be duly served by sending to me through the post office, a letter addressed to me at Mount Gambier." The land having been sold without the notice provided by s. 52 of *The Real Property Act*, 1861, on bill filed by the mortgagor praying that the sale and transfer might be set aside, or for damages: *Held*, that the mortgage did not dispense with the necessity of giving the notices required by *The Real Property Act*, but only with the mode of giving them therein provided, and that the sale was therefore improper, but that the

transferee was protected by *The Real Property Act* as a *bonâ fide* purchaser. That the bill showing no claim to equitable relief irrespective of the question of damages, the Court of Equity would not entertain that question. *VAN DAMME v. BLOXAM*, 9 S.A.L.R. 27.

[VICTORIA, ACT OF 1866, ss. 84, 85.]—*Notice of sale — Default in payment — Payment by mistake.*—Plaintiff, in December, 1887, mortgaged land under the Act to the defendant company to secure a sum of £2,000, payable in December, 1889, interest payable quarterly at 12½ per cent. per annum, or 10 per cent. if punctually paid. After the end of the third quarter (i.e., on 3rd October, 1888), plaintiff, who had previously been in default, paid off the mortgage and all moneys owing to date. The defendant company accepted this money, and further charged plaintiff 5 per cent. per annum on the capital sum for the remaining 15 months which had still to run out of the two years. Plaintiff paid this sum (£125), but afterwards discovered that defendants had, before the settlement of the mortgage by plaintiff, served a notice under s. 84 of Act No. 301 requiring payment of "the money owing" on the mortgage. Plaintiff, on hearing of the service of this notice, contended that the £125 had been paid by mistake, and sued to recover it. *Held*, affirming the decision of the Primary Judge, that plaintiff was entitled to recover the sum sued for. The giving of a notice by the mortgagee under s. 84, demanding from the mortgagor payment of the "money owing" on a mortgage, entitles the mortgagor to pay off, within the time limited by the notice, both principal and interest of the mortgage, although the period fixed by the mortgage for the payment of the principal may not have arrived. Before the date fixed for payment of the principal sum under a mortgage, the tender of the mortgagor of the interest fixed within the period limited by a notice under s. 84 will prevent the mortgagee from exercising his powers of sale under s. 85. Where a mortgage contains a covenant for payment at a date which has not arrived, and for payment of interest in the meantime, and where the mortgagor, after default and notice under s. 84, pays off principal and interest before such date, the mortgagee is entitled to payment of interest only up to the date at which the principal money comes into his hands. The mortgagee, by giving a notice under s. 84, enabling him to sell and raise the principal at any time, intimates to the mortgagor his readiness to receive his principal at any time. *EWART v. GENERAL, FINANCE, & CO., SOCIETY OF AUSTRALASIA*, 15 V.L.R. 625; 11 A.L.T. 97.

[VICTORIA, ACT OF 1866, ss. 84, 105.]—*Notice — Registered proprietor dead — Reasonable means to obtain adequate price.*—A notice under s. 84 can be served by sending the same through the post-office by a registered letter addressed to the registered proprietor at the address appearing in the Register Book, although that proprietor be dead. Mortgagees exercising a power of sale are bound to take reasonable means to obtain an adequate price for the land sold; they are not, however, responsible if, after taking all reasonable means, an inadequate price is obtained. *GUNN v. LAND MORTGAGE BANK OF VICTORIA*, 12 A.L.T. 49.

[Q., ACT OF 1861, 25 Vic., No. 14, s. 57.]—*Other remedies not barred by exercise of*

power of sale.—The exercise by a mortgagee of his power of sale under s. 57 of the Act of 1861 is not a bar to the exercise of his other remedies against his mortgagor. *TRUST AND AGENCY CO. v. MARKWELL, B.C.R.*, 16th March, 1874. (Full Court.)

[N.S.W., ACT OF 1862, ss. 55, 57.]—*Proof of default — Registration of transfer executed by mortgagee.*—The 55th section of *The Real Property Act* of 1862 provides that in case default be made in payment of the principal or interest on a mortgage registered under the Act, and such default be continued for one month, the mortgagee may give the mortgagor a written notice to pay the money due. Section 56 enacts that if such default in payment be continued for the further space of one month the mortgagee may sell the land. And by s. 57 it is provided that "upon proof to his satisfaction by statutory declaration that such default has been made and continues aforesaid, the Registrar-General shall register any memorandum or instrument of transfer executed by a mortgagee," &c. *Held* (Stephen C.J. *diss.*), that under s. 57 the Registrar is entitled to require proof of the default having continued up to the time of sale. *Ex parte HASSALL*, 10 S.C.R. 292.

[VICTORIA, ACT OF 1866, s. 85.]—*Refusal of Court to restrain power of sale where interest in arrear.*—Plaintiff mortgaged land under the Act to defendant. Plaintiff was in arrear in payment of interest, and defendant—the principal not yet being due—served him with a writ in ejectment, and also advertised the land for sale. Upon motion for an injunction to restrain the sale: *Held*, that the Court would not interfere with the exercise of the power of sale by the mortgagee even where the principal was not yet due, unless an offer of both interest due and of the principal were made to him, and this not having been done the motion was refused. *HEEVEY v. INGLES*, 5 W.W. and A.B. (Eq.) 125.

[VICTORIA, ACT OF 1890, s. 116.]—*Validity of sale — Joint and several covenants by mortgagors — Transfer of mortgage to two of mortgagors — Validity of sale.*—P., T., C., and K. were the registered proprietors of certain land mortgaged to a bank. The mortgage contained a joint and several covenant. P. mortgaged *inter alia* his interest in the land to T. and C., and subsequently assigned his estate to the plaintiff for the benefit of his creditors, and executed a transfer of his interest to the plaintiff. T. and C. then paid the bank the amount due under the mortgage and received a transfer of the mortgage. T. and C. caused notice to be served on themselves and K. and the plaintiff, calling upon them to pay to T. and C. all moneys due under the mortgage, and, purporting to exercise the statutory power of sale, sold the land to K. *Held*, that transferees of the mortgage had acquired the rights of the original mortgagee, including the power of sale given on default within the meaning of s. 116 of the Act, and that no moneys having been paid in compliance with the notice, such a default had occurred, and that the sale was valid as against the plaintiff. *STEVENSON v. BYRNE*, 19 A.L.T. 47; 3 A.L.R. 250. (Full Court.)

[VICTORIA, ACT OF 1866, ss. 42, 87.]—*When legal estate passes*—Where the mortgagor is a registered owner of leasehold estate under *The*

Transfer of Land Statute, s. 15, and a mortgage is made and registered under s. 88 and the following sections, the only ways in which the mortgagee can extinguish the rights of the mortgagor are by foreclosure under s. 2 of the Act of 1867 (substituted for s. 88 of the Act of 1866) or by sale under ss. 84 *et seq.* of the Act of 1866; and whether a sale of such leasehold estate is made under the statutory power of sale or as absolute owner, no interest therein passes to the purchaser until registration. *NATIONAL BANK v. UNITED HAND-IN-HAND, &c., Co.*, 4 App. Cas. 391.

(9) Miscellaneous.

[Q., ACTS OF 1861 AND 1877.]—Further advances—*Caveat*.—A caveat does not affect dealings with property outside the Real Property Office. A registered mortgagee without notice of any conflicting rights may make further advances under a mortgage covering further advances, without previously searching the register. *QUEENSLAND TRUSTEES LTD. v. REGISTRAR OF TITLES*, 5 Q.L.J. 46.

[N.S.W., Act of 1862, ss. 58, 59.]—Lease by mortgagor after mortgage—*Proof of default—Powers of mortgagee*.—A., the registered proprietor of land under *The Real Property Act*, mortgaged same to plaintiff and afterwards gave a lease to defendant; rent payable quarterly on 1st October, &c. On 2nd September, A. assigned his estate to trustees for creditors. On 14th September, plaintiff and one of the trustees went together to the defendant and told him to pay rent to the plaintiff. *Held*, that under these circumstances the plaintiff need not in an action for use and occupation give formal proof of default on the part of A. *Quere*, whether the tenant can set up "no default" as a defence? *Semble*, that ss. 58 and 59 must be read together as one clause. *BANK OF NEW SOUTH WALES v. PALMER*, 2 N.S.W.L.R. 125.

[Q. ACT OF 1861, s. 60.]—*Merchant Ship ing Act*, 1854 (17 and 18 Vic., c. 104)—*Rights and remedies of mortgagee under The Real Property Acts*—see *DUNCAN v. WOOD*, 1 Q.L.R. (Pt. I.) 49.

G. POWERS AND RIGHTS OF MORTGAGOR.

(1) Legal Proceedings.

[VICTORIA, ACT OF 1866, s. 94.]—Action by mortgagor—*Consent of mortgagee*.—In an action of ejectment in the County Court by a mortgagor, an objection that no consent of the plaintiff's mortgagee to the bringing of the action, as required by the above section, has been stated or proved, may be cured by amendment; and therefore if not made at the hearing cannot be entertained on appeal. A mortgagor in possession after default is a tenant at sufferance, whose tenure is determined by a sale by the mortgagee. *GRIFFIN v. DUNN*, 4 V.L.R. (L.) 419. (Full Court.)

[VICTORIA, ACT OF 1890, ss. 124, 125, 131.]—Action by mortgagor before registration of discharge—*Consent of mortgagee to sue*.—A mortgagor of land under *The Transfer of Land Act*, 1890, who has paid off the money due under the mortgage, and who has lodged the discharge for registration but has not obtained registration thereof, is bound by s. 125 of the Act to obtain the written consent of the mortgagee before he can commence an action in his

own name in respect of which the mortgagee might have sued. *TAYLOR v. WOLFE AND CO.*, 18 V.L.R. 727. (Full Court.)

[VICTORIA, ACT OF 1890, s. 125.]—Action by mortgagor and licensee in joint possession—*Trespass—Right of mortgagor to bring action for injury to possessory rights without written consent of mortgagee*.—A mortgagor in possession of land granted grazing rights over the land to a licensee. The defendant trespassed on the land and injured the fences on it, the grass, and the soil. *Held*, that the mortgagor and the licensee could bring a joint action for damages for injury to their possessory rights without obtaining the written consent of the mortgagee, as required by s. 105 of *The Transfer of Land Act*, 1890. *BURWOOD LAND CO., &c., AND KNOX v. TUTTLE*, 21 V.L.R. 381. (Full Court)

[VICTORIA, ACT OF 1866, ss. 93, 94.]—Action by mortgagor for use and occupation.—The powers conferred by s. 93 of the Act upon the mortgagee do not prevent the mortgagor from maintaining an action for use and occupation before the mortgagee enters into possession. F. was registered proprietor of land under the Act, which he mortgaged to a bank. He afterwards transferred the land, subject to the mortgage, to the plaintiff. A former proprietor of the land had executed a deed of assignment, including the land, and the trustees under the deed had let the defendant into possession under a verbal agreement. The action was for use and occupation, and there was evidence that defendant had recognised plaintiff's title. *Held*, that such recognition was sufficient to sustain the action, and that no consent in writing by the mortgagee under s. 94 was necessary, as the defendant, having previously recognised plaintiff's title as transferee from the mortgagor and the mortgagee himself, could not bring the action. *LOUCH v. BALL*, 5 V.L.R. (L.) 157; 1 A.L.T. 10.

[VICTORIA, ACT OF 1866, s. 116.]—Capacity of mortgagor to lodge a caveat.—An owner of land subject to a mortgage is a person entitled to lodge a caveat against dealings by the registered mortgagee. *DAVIES v. HERBERT*, 11 V.L.R. 386, 6 A.L.T. 19.

2. Release or Discharge.

[N.Z.]—Refusal to execute release—*Mortgage—Lease—Brewer's covenant—Whether binding after payment—Construction—Validity—Land Transfer Act—Mortgagee—Costs*.—M., a publican, purchased from S., a brewer, the lease of a hotel, and gave him a mortgage of the lease to secure the purchase money. The title was under *The Land Transfer Act*. The mortgage contained a covenant by M. that he would, "at all times during the continuance of the term of years granted by the said memorandum of lease," purchase from S. all colonial ale and stout, &c., "at any time during the said term of years," used or consumed or sold upon the demised premises. *Held*, that this covenant ceased to be binding on payment of all moneys secured by the mortgage, notwithstanding that the term of the lease had not yet come to an end. *Quere*, whether such a covenant, inserted in a mortgage, is not altogether void as purporting to give the mortgagee a collateral advantage in addition to interest for his money, and tending to clog the equity of redemption? *Per Richmond*

J.: The District Land Registrar ought to refuse to register as a mortgage an instrument containing such a provision. The mortgagee, on payment of his principal and interest, having refused to execute a discharge of the mortgage, except with a reservation as to the covenant to deal, was ordered to pay to the mortgagor the costs of a suit to compel him to execute an unqualified discharge. *STAPLES v. MACKAY*, 11 N.Z.L.R. 258.

[VICTORIA, ACT OF 1866, ss. 38, 50, 129 (3).]—Trust—*Duty of Registrar*.—Where the discharge of a mortgage of which the mortgagees are trustees is presented for registration by a registered proprietor, the Registrar is not at liberty to refuse to register such discharge on the ground that it was not shown to his satisfaction that the dealing was authorised by the trust. *Ex parte CAMPBELL*, 9 A.L.T. 183.

3. Right to Redeem,

(See Foreclosure (F, 6), *supra*.)

4. Vesting Order.

(See also Foreclosure, F, 6, *supra*.)

[Q., ACT OF 1861, ss. 25, 43; ACT OF 1877, ss. 48, 49, 51.]—Where mortgagee has ceased to exist—*Interest—Security*—31 Vic., No. 19, s. 1.—The word "interest" in the interpretation clause of *The Trustees and Incapacitated Persons Act of 1867* (31 Vic., No. 19), s. 1, is of general application, and not limited to an "interest in land" as distinguishable from a security upon lands under *The Real Property Acts*. Land had been mortgaged to a building society; the mortgage had been paid off; the building society had ceased to exist, and no trace of a release could be found. An order was made vesting in the petitioner (the original mortgagor) the interest of the society in the mortgage. *In re CAIN*, 5 Q.L.J. 93.

H. PRACTICE.

(See Foreclosure.)

J. REGISTRATION.

(See Foreclosure.)

K. SECOND MORTGAGE.

(See also POWERS AND REMEDIES OF MORTGAGEE.)

[VICTORIA, ACT OF 1890, ss. 144, 145, 153.]—Caveat—*Transfer of land to first mortgagee*—*Mortgage still on register*—*Caveat by second mortgagee*—*Form of caveat*.—The first mortgagee of land, which was also subject to a second mortgage, obtained a judgment against the mortgagor for overdue interest. Under this judgment, a sale of the land was held by the sheriff, at which a clerk of the first mortgagee bought, and subsequently transferred the land to the first mortgagee. According to the certificate of title of the land which was then issued to the first mortgagee, the land was subject to the two original mortgages. Some years afterwards, the second mortgagee lodged a caveat, by virtue of his mortgage (describing it) forbidding any dealing with the land. On a summons calling on the caveator to show cause why the caveat should not be removed: *Held*, that the caveat should be altered so as to forbid dealing with the land until notice had been given to the second

mortgagee. *Held further by Holroyd and Hood JJ.* (A'Beckett J. dissenting) that the caveat should be further altered so as to state the nature of the title under which the second mortgagee claimed—*i.e.*, whether he claimed as the only mortgagee, or as second mortgagee. *In re VICTORIAN FARMERS LOAN AND AGENCY COMPANY, LIMITED*, 22 V.L.R. 629, 18 A.L.T. 204, 3 A.L.R. 47.

L. TRANSFER OF MORTGAGED LAND.

[S.A., ACT OF 1861; ACT OF 1878.]—Extension to transferee of time for repayment—*Payment of interest by transferee*—*His liability*.—P.D., to secure the repayment of a sum of money lent to himself by the plaintiff, executed a memorandum of mortgage of certain sections of land to the plaintiff, and subsequently transferred the same sections to the defendant, subject to the mortgage. After the transfer to the defendant, P.D. was adjudicated insolvent. On the principal moneys and interest secured by the mortgage becoming due, the plaintiff, at the defendant's request, agreed to extend the time for the repayment of the principal sum in consideration of the payment of a higher rate of interest. A document to that effect was accordingly signed by the plaintiff and the defendant, and the defendant paid interest at the increased rate. The extended term having expired, *held*, that the defendant was directly liable to the plaintiff, notwithstanding that the transfer and the subsequent extension had not been executed in accordance with the requirements of *The Real Property Act of 1861*. *BUTTERS v. BLACKLER*, 21 S.A.L.R. 37.

[Q., ACT OF 1861, s. 68.]—Implied covenant to indemnify transferor—*Right to prove in insolvency in respect of covenant to indemnify*—*Measure of extent of proof*—38 Vic., No. 5, s. 140.—W., the registered proprietor of land under the Real Property Acts, mortgaged it for £13,000 to an assurance society, and afterwards transferred it to a joint stock company, subject to the mortgage. W. became insolvent, and the society proved in his estate for the amount due under the mortgage, but no dividend was paid in respect of their proof. Subsequently, the company to whom the land had been transferred went into liquidation, and W.'s trustee sought to prove in the liquidation for the full amount due under the mortgage from W. to the society in respect of which, under s. 88 of *The Real Property Act of 1861*, the company had covenanted to indemnify W. There were no assets in W.'s estate available for the payment of a dividend. *Held*, that W.'s trustee was not entitled to prove for the amount of the mortgage debt; that the only right of proof was under s. 140 of *The Insolvency Act* for a contingent liability, which, as it arose from a covenant for indemnity only, could not exceed the actual loss to which, on a balance of accounts between W. and the company, he or his estate was liable. *Re ALFRED SHAW & Co. LTD.*, *Ex parte MURPHY*, 8 Q.L.J. 70.

[Q., ACT OF 1860, 25 Vic., No. 14, s. 68.]—Indemnity.—The covenant mentioned in s. 68 is with the transferor. *FEDERAL BUILDING SOCIETY v. WHALLEY*, 2nd Dec., 1891, *Harding J.*; cited in *WILLCOCKS v. PRENTICE*, B.C.R., 27th July, 1893.

[Q., ACT OF 1861, 25 Vic., No. 14, s. 68.]—*Indemnity—Land subject to mortgage—Form of judgment.*—The purchaser of land, subject to a bill of mortgage, registered under *The Real Property Act*, is by s. 68 under an implied covenant to indemnify the mortgagor against claims for interest by the mortgagee, and a declaration for indemnity, and an order for payments of the amount claimed, may be made against the transferee, although no money has been paid by the mortgagor, or by another person jointly and severally liable under the mortgage. Form of judgment in such case. *STANLEY v. WISEMAN*, 6 Q.L.J. 84.

[VICTORIA, ACT OF 1866, ss. 90, 110.]—*Liability of transferee—Of land subject to mortgage on covenants in mortgage.*—These sections do not create a new liability, but merely make the transferee liable to covenants running with the land. On the covenant to pay the mortgage debt he is not liable to pay the mortgagee, but merely liable to indemnify the mortgagor against the claim of the mortgagee. *AUSTRALIAN DEPOSIT BANK v. LORD*, 2 V.L.R. (L.) 31.

[N.Z., ACT OF 1885, ss. 38, 114, 175.]—*Production of certificate—Implied contract—Sale under mortgage—Failure of consideration—R.* purchased from C. land under *The Land Transfer Act*, 1885, subject to a mortgage to H., which contained an express provision to the same effect as s. 114 of the Act, that the certificate was to remain in the possession of the mortgagee so long as any principal or interest remained unpaid. *Held*, that there was no implied contract on the part of the vendor to produce or to procure the production of the certificate of title in order to enable the transfer to the purchaser to be registered. It is the business of the purchaser of land under *The Land Transfer Act* to take his transfer to the Registry Office, and to procure himself to be registered as proprietor. C. and another having, at the request of H., paid to him the amount of the principal before due date, and having afterwards taken a transfer of the mortgage to themselves, and having subsequently sold under the mortgage through the Registrar of the Supreme Court, and bought in themselves, R. brought an action to recover from C. the purchase money paid by him for the equity of redemption, either as damages for breach of contract or as upon a failure of consideration, alleging conduct on the part of C. which prevented him (R.) from redeeming. *Held*, that R. had no cause of action. *COMMON v. REES*, 9 N.Z.L.R. 555. (Court of Appeal.)

MORTGAGEE.

Right of, to bring land under Act
See BRINGING LAND UNDER ACT.

MORTGAGOR.

Caveat by
See CAVEAT AGAINST DEALINGS.

NATIVE LAND COURT.

Invalid proceedings in, prior to bringing land under Act
See CERTIFICATE OF TITLE—(B)
Conclusive Effect.

NEGLIGENCE.

Of solicitor in not filing case on trial of issues

See BRINGING LAND UNDER ACT—C.
(d).

In re JONES, 2 W.N. (N.S.W.) 74, 84.

On part of trustee

See TRUSTS AND EQUITIES—Notice.

In not registering transfer

See TRUSTS AND EQUITIES—Priorities.

Of Registrar's Office

See REMEDIES FOR DEPRIVATION—Assurance fund.

In survey

See BOUNDARIES.

ARCHARD v. ELLERKER, 10 A.L.T. 196.

NOMINATION OF TRUSTEES.

See TRUSTS AND EQUITIES

Deposit of

See MORTGAGE—Equitable mortgage.

NONSUIT.

[VICTORIA, ACT OF 1866, s. 159.]—The registered proprietor will be nonsuited in an action of ejectment if he produces evidence showing that his certificate of title was improperly obtained. *MILLER v. MORESEY*, 2 V.R. (L.) 193; 2 A.J.R. 115. (Full Court.)

NOTICE.

To Registrar of enforceable rights

See REGISTRAR, DUTIES OF.

Register to be notice

See REMEDIES FOR DEPRIVATION—Assurance Fund.

Of fraud

See FRAUD.

Of existing trusts or interests

See TRUSTS AND EQUITIES—Notice.

Of sale by sheriff of equity of redemption

See SALES BY SHERIFF.

To determine tenancy

See MORTGAGE—Ejectment.

Purchaser obtaining registration of transfer after notice of prior unregistered transfer

See TRUSTS AND EQUITIES—Priorities.

OCCUPATION.

As evidence of disputed boundaries.
See BOUNDARIES.

OCCUPIER.

See MORTGAGE—*Powers and remedies of mortgagee.*

OFFICIAL SIGNATURE.

Proof of
See EVIDENCE.

ONUS PROBANDI.

See EVIDENCE.

OPTION TO PURCHASE.

See LEASE.

PARAMOUNT TITLE.

Of registered proprietor
See CERTIFICATE OF TITLE (B).
See CROWN GRANT.
See LEASE.
See REMEDIES FOR DEPRIVATION.

PARCELS.

See BOUNDARIES.
The certificate of title is conclusive evidence on the question of parcels
See CERTIFICATE OF TITLE—(B)
Conclusive effect.

PARTY.

See PRACTICE.

PERSON DEPRIVED OF LAND.

See REMEDIES FOR DEPRIVATION.

“PERSON DEPRIVED OF LAND THROUGH FRAUD.”

See INTERPRETATION—*Words.*
See REMEDIES FOR DEPRIVATION.

PLAN.

Of land, deposited
See BOUNDARIES.
See EASEMENT.
See EVIDENCE.

PLEADING.

See BRINGING LAND UNDER ACT—
(E) *Miscellaneous cases.*
See PRACTICE.
In action against Assurance Fund
See REMEDIES FOR DEPRIVATION.

POSSESSION.

Demand of
See MORTGAGE—*Ejectment.*

Action on contract to give

PHENIX FOUNDRY Co. v. HUNT, 5
A.J.R. 70.

Right of person in, to bring land under Act

See BRINGING LAND UNDER ACT.

POSSESSORY TITLE.

See ADVERSE POSSESSION.

POWER OF APPOINTMENT.

See REMEDIES FOR DEPRIVATION.
HAYES v. REGISTRAR OF TITLES, 7
Q.L.J. 146.

POWER OF ATTORNEY.

See EASEMENT.

See EVIDENCE.

See FRAUD.

[VICTORIA, ACT OF 1866, ss. 36, 49.]—
Easement created under excessive exercise of power.—Where an attorney under power acting in excess of the authority conferred on him, executed an easement of right-of-way under the Act: *Held*, that inasmuch as the instrument so executed purported to transfer and grant an incorporeal hereditament, it was an “instrument purporting to affect land” within the meaning of s. 36, and therefore, upon registration under that section, the grantee in the absence of fraud became by virtue of ss. 36 and 49 the registered proprietor of the easement of right-of-way mentioned in the instrument, and entitled to exercise the rights of a registered proprietor. *MAGOR v. DONALD*, 13 V.L.R. 255; 8 A.L.T. 150. (Full Court.)

POWER OF SALE.

See MORTGAGE.

See TRANSMISSION.

See TRUSTS AND EQUITIES.

Given to trustees, does not include power to lease

ROWELL v. KEATS, 19 S.A.L.R. 8.

Of administrator or executor

See TRANSMISSION.

Of devisee

See TRUSTS AND EQUITIES.

Trustees without—Issue of certificate of title to trustees

See BRINGING LAND UNDER ACT—
(B) *Capacity.*

PRACTICE.

See BRINGING LAND UNDER ACT.

See CAVEAT.

See EVIDENCE.

See REGISTRAR, DUTIES OF.

See TRUSTS AND EQUITIES.

Amendment of issues on trial of issues upon application to bring land under Act

JONES v. HILL, 2 W.N. (N.S.W.) 11.

Caveat against bringing land under the Act—As to power of the Court or a judge to deal with caveats against bringing land under the Acts

See BRINGING LAND UNDER ACT—Lapse and removal of caveats.

Counterclaim—Specific performance of agreement for sub-lease

See LEASE.

MUNRO AND BAILLIEU v. ADAMS, 17 V.L.R. 708.

Ex parte, order to prevent lapsing of caveat against application cannot be made

Re LE COMTE, N.Z.L.R. 4 S.C. 340.

Ex parte application and order for production of deeds by Registrar.

SLACK v. WINDER, 4 A.J.R. 117;
FISHER v. STUART, 7 A.L.T. 45.

Inspection and production of instruments

See INSTRUMENTS AND DOCUMENTS OF TITLE.

Parties

See BANKRUPTCY.

Parties—What parties are necessary in a suit for cancellation of certificate of title on the ground of fraud

See FRAUD.

BRADY v. BRADY, 8 S.A.L.R. 219

Parties—Specific performance of agreement for lease

See LEASE.

HOOD v. CULLEN, 6 N.S.W.L.R. (Eq.) 22, 1 W.N. (N.S.W.) 117.

Parties—Action by mortgagor—Consent of mortgagee

See MORTGAGE—Powers of mortgagor

Parties—Registrar when a necessary party to an action for cancellation of certificate of title.

OGLE v. AEDY, 13 V.L.R. 461.

Pleading—Action on contract to give possession.

PHOENIX FOUNDRY Co. v. HUNT, 5 A.J.R. 70.

Pleading—Merger—Failure to plead

See LEASE.

MUNRO AND BAILLIEU v. ADAMS, 17 V.L.R. 708.

Removal of caveats

See CAVEAT AGAINST DEALINGS.

Right to begin and right of reply on summons to Recorder to show grounds of refusal to bring land under Act

Re COOK, 12th July, 1878, Tas. Dig., col. 107.

Sale by sheriff—Lodgment of fi. fa. for registration—Time

See SALES BY SHERIFF.

RICHARDS v. CADMAN, 17 V.L.R. 203.

Service of notice of rule nisi to remove caveat against application

See BRINGING LAND UNDER ACT.

Re SLACK, 1 V.L.R. (L.) 319.

Special case—Dedication—As to effect of subdividing land and depositing plan showing road

See EASEMENT.

Ex parte LE GOULD, 1 S.C.R. (Q.) 130.

Summary ejectment of mortgagor by mortgagee

See MORTGAGE—Ejectment.

Summons for production of certificate of title by mortgagee

See MORTGAGE—Powers of mortgages

Re ARMITAGE, Ex parte ANDREWS, 17 V.L.R. 77, 12 A.L.T. 164.

PRACTICE.

[VICTORIA, ACT OF 1890, ss. 19, 21, 26.]—*Certificate of title.*—The mode of obtaining certificate of title, where title superior to that of holder of existing certificate has been acquired by adverse possession, is by bringing an action against the registered proprietor to compel him to transfer. Re ALLEN, 18 A.L.T. 28, 22 V.L.R. 24. (Full Court.)

[VICTORIA, ACT OF 1866.]—*Damages—Wrong survey—Pleading.*—Damages for negligence in survey by omission of some of the figured dimensions, through which the plaintiff is left with an apparent title to less than he really possesses, are general damages, and may be recovered under the general head damages, though not specifically alleged. ARCHARD v. ELLERKER, 10 A.L.T. 196. (Full Court.)

[N.Z., ACT OF 1885.]—*Jurisdiction of Supreme Court—Removal of caveat lodged by District Land Registrar.*—When the District Land Registrar has improperly lodged a caveat, the Supreme Court has power on summons to order its removal, either at the instance of the certificated owner or of a purchaser from him. Such a purchaser is not, within the terms of s. 114 of the Act of 1885, a registered proprietor

nor an applicant, but his case falls within s. 191, as he has a right of redress, and the Registrar has a correlative duty. *In re TANNER*, N.Z.L.R., 5 S.C. 102.

[S.A., ACT OF 1861.]—Jurisdiction of Supreme Court—*Application for transmission. Quere*, Whether the Supreme Court has any jurisdiction on applications for transmission by death, and whether the absolute and final decision in all such cases is not vested in the Registrar-General and the Lands Titles Commissioners? *LANGE v. RUWOLDT*, 7 S.A.L.R. 1. (Full Court.)

[S.A., ACT OF 1867.]—Jurisdiction of Supreme Court—*Summons referred to Full Court—Evidence of facts arising after reference, but before hearing.*—When a summons is referred by a judge to the Full Court, the Court must deal with the matter on the basis of the state of facts at the time when the summons was so referred, and can take cognisance of nothing that has been done after that period. *In re CLARK AND HARVEY*, 2 S.A.L.R. 91. (Full Court.)

[N.S.W., ACT OF 1862, s. 82.]—Jurisdiction of Supreme Court—*Appeal—Procedure—Removal of caveat.*—The Full Court has no power to delegate its functions to one of its members, and a single judge cannot therefore by delegation sit as the Court under s. 82 of *The Real Property Act*, but sits as a judge. No appeal lies from an order made by a judge under s. 82 of *The Real Property Act*. The Court has an inherent jurisdiction to, and will always entertain, an appeal from the decision of a judge sitting in Chambers upon a matter of procedure. Notice of an application to rescind an order obtained by a caveator restraining the Registrar-General from dealing with land until further order should be given to the caveator. *In re KNIGHT*, 18 N.S.W.L.R. (L.) 315; 14 W.N. (N.S.W.) 56. (Full Court.)

[N.S.W., ACT OF 1862.]—Jurisdiction of Supreme Court—*Examination of witnesses—Motion under Real Property Act—Common Law Procedure Act, 1857, s. 19.*—Section 19 of *The Common Law Procedure Act, 1857*, is of general application, and under it an order for the examination of witnesses may be made in any common law matter. *In re SOLLING*, 10 N.S.W. (W.N.) 56. (Full Court.)

[N.S.W., ACT OF 1862, s. 43.]—Jurisdiction of Supreme Court—*Settlement of issues for trial.*—Upon a motion to remove a caveat or direct an issue the Court is not strictly bound by the terms of the notice of motion, but settles the issues which really arise. *In re HOUSON* (SHEPHERD SMITH, CAVETOR), 14 W.N. (N.S.W.) 3; 18 N.S.W.L.R. (L.) 300. (Full Court.)

[VICTORIA, ACT OF 1866, s. 152.]—Jurisdiction of Supreme Court—*Inquiry as to disputed title—Power to direct inquiry.*—*Quere*, whether the Supreme Court has power to direct the mode of investigation of a disputed title, no rules having been made under the powers conferred on that behalf by s. 125 of the Act of 1866? *Semble*, that inasmuch as the Court must determine the matter if it has jurisdiction, and some cause of procedure is necessary for that purpose, the Court is at liberty to prescribe the most convenient course, being the one which it would have been empowered to prescribe by rule. *In re BYRNE, Ex parte METROPOLITAN BUILDING SOCIETY*, 10 V.L.R. (L.) 361; 6 A.L.T. 171. (Full Court.)

[VICTORIA, ACTS OF 1866, 1878.]—Jurisdiction of Supreme Court—*Easement, denial of—Procedure.*—There are no means provided by *The Real Property Acts* of 1866 and 1878 by which the owner of a tenement alleged to be servient can contest the claim of the owner of the alleged dominant tenement to have registered an easement over the alleged servient tenement. *In re BYRNE, Ex parte METROPOLITAN BUILDING SOCIETY*, 10 V.L.R. (L.) 361; 6 A.L.T. 171. (Full Court.)

[VICTORIA, ACT OF 1890.]—Jurisdiction of Supreme Court—*Supreme Court Act, 1890 (No. 1142) s. 85—Foreign procedure—Mortgage—Mortgagor resident in England—Breach of contract within jurisdiction.*—The defendant, who resided in England, executed a mortgage under *The Transfer of Land Act, 1890*, over land in Victoria; in the mortgage the mortgagees were described as of Melbourne. *Held*, that *prima facie* the mortgagor had contracted to pay the mortgagees in Melbourne; and that the assignee of the mortgage could bring an action in Victoria on the mortgagor's personal covenant to pay on a writ for service out of the jurisdiction. *BANK OF VICTORIA LIMITED v. ROBERTSON*, 18 A.L.T. 201, 245. (Full Court.)

[VICTORIA, ACT OF 1866, 15 Vic., No. 10, s. 19.]—Jurisdiction of Supreme Court—*The Judicature Act, 1883 (No. 761), ss. 10, 19—Supreme Court rules, 1884, Order 63, r. 2—Practice—Ex parte application—Application to restrain Registrar of Titles.*—Rule 2 of Order 63 of *The Supreme Court Rules, 1884*, enables a single judge at any time to entertain any application which he may think requires to be immediately or promptly heard, though the matter concerned be such as should, apart from the rule, be heard by the Full Court alone. An application to restrain the Registrar of Titles from registering a transfer of land for a time to be fixed should be made upon notice, and not *ex parte*. *Ex parte PECK*, 10 V.L.R. (L.) 328. (Full Court.)

[VICTORIA, ACT OF 1866.]—Jurisdiction of Supreme Court—*Ejectment—Action for—Writ—Several parcels.*—Several parcels of land held under distinct titles may be joined in one writ of ejectment. Section 120 of *The Common Law Procedure Statute, 1865*, does not prohibit such a joinder, but only the joinder of other kinds of actions with that of ejectment. *STEWART v. BOLTON*, 8 V.L.R. (L.) 305. (Full Court.)

[TAS., ACT OF 1886, s. 22.]—Jurisdiction of Supreme Court—*Priorities between judgments.*—The meaning of the above section is that in dealing with a caveat entered by a judgment creditor under that section the Judge is to declare the priorities of judgments, being guided by the ordinary rules of law and equity as to the upholding or setting aside of the same. *In re BRADLEY*, TAS. DIG., col. 106.

[S.A., ACT OF 1861.]—Jurisdiction of Supreme Court—*Reformation of documents—Fraud—Want of equity.*—A bill of complaint alleged that the defendant had advanced to the plaintiff, during his minority, certain sums of money, and afterwards certain other sums, to secure payment of the whole of which he obtained two mortgages from the plaintiff of certain land under the provisions of *The Real Property Act, 1861*; that subsequently, in 1871, the plaintiff authorised an auctioneer to advertise the land

for sale, subject to the mortgages and to a certain lease; and that the defendant became the purchaser, pursuant to such advertisement, for the sum of £610; that the defendant obtained from the plaintiff a transfer of the land free from encumbrance, fraudulently omitting to endorse on such transfer the said mortgages, and afterwards paid to the plaintiff, as the purchase money of the said land, the sum of £610, less the amount of principal and interest due on the mortgages, and procured himself to be registered as proprietor of the said land, free from the said mortgages and the said lease. The bill prayed that the transfer might be rectified by the entry thereon of the said mortgages; that the defendant might be ordered to pay the sum of £525 16s., balance of unpaid purchase money, general relief, and costs. *Demurrer* to above bill *upheld* on the following grounds:—(1) That the lessee was a necessary party and should have been joined; (2) that the rectification of the transfer would be inoperative without a rectification of the register, and that there was nothing on the bill to show the state of the register, or that rectification would not affect subsequent interests; (3) that the only substantial relief sought was the payment of balance of the purchase money alleged to remain unpaid, and that the proper remedy for recovery of such balance was by action at law; (4) that the only relief that could be afforded, under the prayer for general relief, would be to set aside the whole transaction, and that the plaintiff, in claiming the results of that transaction, had disentitled himself to such relief. *Quere*, whether the equitable doctrine of reformation of instruments is applicable to the documents affecting land under the provisions of *The Real Property Act*, 1861? *FERRETT v. CLARK*, 10 S.A.L.R. 202.

[N.S.W., ACT OF 1862, ss. 21, 23.]—Jurisdiction of Full Court.—*Quere*, whether an order of the Full Court is necessary for the examination of a witness *de bene esse* in a real property issue. *Re O'BRIEN*, 2 N.S.W.L.R. 301. (Full Court.)

N.S.W., ACT OF 1862, s. 23; ACT OF 1878, s. 4.]—Jurisdiction of Full Court.—*Semble*, an order of the Full Court is necessary to restrain the Registrar from bringing land under the Act, under s. 23 of the Act of 1862 and s. 4 of the Act of 1878. *Re MACKENZIE*, 11 N.S.W.L.R. (C.L.) 277. (Full Court.)

[S.A., ACT OF 1861.]—Jurisdiction of Court of Equity.—*Fraud*.—The Court of Equity has concurrent, if not sole, jurisdiction in cases of fraud arising out of *The Real Property Act*. *BRADY v. BRADY*, 8 S.A.L.R. 219.

[VICTORIA, ACT OF 1866.]—Jurisdiction of County Court.—*Caveats*.—*Quere*, Has the County Court jurisdiction to deal with matters arising out of caveats under the Act? *McCLUSKEY v. FRAME*, 13 V.L.R. 93.

[VICTORIA, ACT OF 1866.]—Jurisdiction of Court of Mines.—The Supreme Court has concurrent jurisdiction with Courts of Mines, but generally would not exercise such jurisdiction in matters within the jurisdiction of the latter courts. Where a trespass suit was instituted in a Court of Mines by the holder of a certificate of title to a mining lease, and the defendant filed a bill in Equity impeaching the certificate of title

for fraud, the Court, upon demurrer, refused to entertain the suit, on the ground that the matters put forth in the bill were available as a defence to the plaintiff in the Court of Mines, and that any active relief required by the defendant in Equity might be given in the Court of Mines by way of cross relief. The Supreme Court in Equity has no jurisdiction to order the cancellation of a certificate of title. The proper mode of giving relief from the inequitable effect of such a certificate of title is by ordering the registered proprietor to execute a transfer. *GUNN v. HARVEY*, 1 V.L.R. (E.) 111.

[VICTORIA, ACT OF 1867, s. 12.]—Jurisdiction of Commissioner of Titles.—*Vesting order*.—*Statute of Trusts*, 1864 (No. 234), s. 19—*Jurisdiction of Supreme Court*—*Notice to person affected*.—The only power of the Commissioner of Titles to make a vesting order as to land under *The Transfer of Land Act*, 1866 (No. 301), is that contained in s. 12 of *The Amending Act* of 1867 (No. 353, s. 12). That section empowers him to make an order only in cases, in which the Supreme Court would have such power under s. 19 of *The Statute of Trusts*, 1864 (No. 234), *Trusts Act*, 1890 (No. 1150, s. 9); and such power can be exercised by him only after compliance with the formalities which would be observed by the Supreme Court; and inasmuch as the Supreme Court would not make an order vesting land in new trustees without notice being first given to the old trustees in whose name it stood, the Commissioner has no power to do so until such notice has been given. *WERNER v. BOEHM*, 16 V.L.R. 73; 11 A.L.T. 128.

[N.S.W., ACT OF 1878.]—Stay of proceedings.—Pending appeal to Privy Council by an unsuccessful caveator, certificate of title issued to applicant on his undertaking not to deal with the land. *SOLLING v. BROUGHTON*, 8 W.N. (N.S.W.) 45. (Full Court.)

[VICTORIA, ACT OF 1866, s. 24.]—Vacation.—Order restraining Registrar from bringing land under Act, under s. 24 of Victorian Act of 1866, may be obtained in vacation, although caveator might proceed by bill in equity. *Ex parte MAHONEY*, 1 A.L.T. 132.

[N.S.W., ACT OF 1862, s. 23; ACT OF 1878, s. 4.]—Vacation.—*Single judge sitting as Full Court*—4 Vic., No. 22, s. 27.—A single judge has, *proprio vigore*, no power to make an order under the above sections restraining the Registrar-General from bringing the land under the Act; and if he makes such an order as for the Full Court in vacation, or in case of exigency, under 4 Vic., No. 22, s. 27, it requires confirmation. *In re MACKENZIE*, 11 N.S.W.L.R. (L.) 277. (Full Court.)

PRESCRIPTION.

See ADVERSE POSSESSION.

See BRINGING LAND UNDER ACT.

PRESCRIPTION ACT.

See EASEMENT.

PRESUMPTION OF TITLE

On extinction of that of rightful owner
 See ADVERSE POSSESSION.
 See REMEDIES FOR DEPRIVATION.

PRINCIPAL.

Due under mortgage
 See MORTGAGE—Power of sale.

PRIORITY.

See BOUNDARIES.
 See CHARGING ORDER.
 See MORTGAGE—Equitable Mortgage
 See SALES BY SHERIFF.

As between Crown grantee and conditional purchaser
 See CROWN GRANT.

Between will and unregistered transfer
 See TRANSFER.

Between writs of fi fa
 See SALES BY SHERIFF.

Between transfers from registered proprietor and Sheriff
 See SALES BY SHERIFF.

Duty of Registrar to determine
 See REGISTRAR, DUTIES OF.

Effect of caveat on
 See CAVEAT AGAINST DEALINGS.

Purchaser with actual notice cannot gain, by registration.

VOCKENSOHN v. ZEVENBOOM, 3 W.W. AND A'B. (Eq.) 11, 15, 22; COWELL v. STACEY, 13 V.L.R. 80.

Where two certificates of title issued for the same land

See CERTIFICATE OF TITLE—(B) Conclusive Effect.

PROBATE.

Necessity for, to enter transmission
 See TRANSMISSION.

Production of, on sale of land by executrix.

See TRUSTS AND EQUITIES—Recognition of trusts.

PRODUCTION OF DEEDS.

Summons to compel—Notice to parties interested in land

See BRINGING LAND UNDER ACT—Miscellaneous cases.

Ex parte MORGAN, 4 A.J.R. 117.

PRODUCTION OF TITLE OR INSTRUMENT UNDER THE ACT.

See INSTRUMENTS AND DOCUMENTS OF TITLE.

See MORTGAGE—Powers and remedies of Mortgagee.

See REGISTRAR, DUTIES OF.

PROPRIETOR.

See CAVEAT AGAINST DEALINGS—Withdrawal or removal.

PUBLIC OFFICER.

Caveat by—Costs against caveator.
 See COSTS.

PURCHASE.

Option to, in lease
 See LEASE.

PURCHASE MONEY.

See TRUSTS AND EQUITIES—Notice.

PURCHASER.

Issue of certificate of title to—Payment of stamp duty.

See BRINGING LAND UNDER ACT—(D) Duties of Registrar.

Ex parte GLISSOLD, 5 N.S.W.L.R. (C.L.) 176.

RATES.

Payment of, as evidence of possession
 See ADVERSE POSSESSION.

Land sold for non-payment of, by the Public Trustee may be brought under the Act by the purchaser

See BRINGING LAND UNDER ACT—(B) Capacity.

In re POND, N.Z.L.R. 5 S.C. 254.

Lease by local authority where rates unpaid

See LEASE — (G.) Unregistered lease.

KIRKHAM v. JULIAN, 11 V.L.R. 171; 6 A.L.T. 253.

RECTIFICATION.

Of certificate of title

See BOUNDARIES.

See CAVEAT.

See CERTIFICATE OF TITLE—(A) Cancellation.

Of instrument

See INSTRUMENTS AND DOCUMENTS OF TITLE.

See TRUSTS AND EQUITIES—Recognition of trusts

RE-ENTRY.

Right of
See LEASE.

REGISTRAR.

Action against
See REMEDIES FOR DEPRIVATION—
Assurance Fund.

Costs of appeal from
See COSTS.

Duties of
See BANKRUPTCY.
See BRINGING LAND UNDER ACT.
See CAVEAT AGAINST DEALINGS.
See CERTIFICATE OF TITLE (A) (1)—
Powers of Registrar.
See CROWN GRANT.
See INFANT.
See SALES BY SHERIFF.

*Duty of on application by claimant of
possessory title to bring land under the
Act*

See ADVERSE POSSESSION.
See BRINGING LAND UNDER THE
ACT.

Duties of, on sale by mortgagee.
See MORTGAGE—Power of sale.

*Duty of, as to payment of debts before
transfer from personal representative
to beneficiary*

See TRANSMISSION.
Ex parte WISEWOULD, 11 A.L.T. 182.

Order to restrain
See BRINGING LAND UNDER ACT.

Receiver of rents and profits
See CAVEAT AGAINST DEALINGS.
D'ALBEDHYLL v. D'ALBEDHYLL,
N.Z.L.R. 3 S.C. 391.

REGISTRAR, DUTIES OF.

[N.S.W., Act of 1862.]—Act of Parliament
—Private Act—Noting encumbrances on certi-
ficate of title.—As to the effect of a Private Act
to prevent the noting of encumbrances on a cer-
tificate of title, see BRINGING LAND UNDER ACT.
Ex parte PENNINGTON (Knox 376.)

[N.S.W., Act of 1862, s. 11 (5).]—Caveat
in respect of Crown lands.—The proper
person to lodge a caveat against the bringing
of Crown lands under the Act is not the
Registrar, but the Attorney-General. In re
WALKER, 11 N.S.W.L.R. 369.

[Q., Act of 1861, s. 25.]—Caveat by cestui
que trust.—The Registrar-General has no
authority to deal with a caveat lodged by a
cestui que trust where proceedings have been
taken in Equity within three months. In re
BRAMSTON, Ex parte EDE, B.C.R. 31st May, 3rd
June, 14th July, 1873.

[Q., Acts of 1861 and 1878.]—Caveat
tendered after time specified for lodging.—
The Registrar of Titles is not liable for misfea-
sance in refusing to receive a caveat lodged
after the expiration of the time prescribed by the
notice but before the issue of the certificate of
title. He should, however, pay attention to such
an application, and make inquiries, in order to
protect the Assurance Fund. QUEENSLAND
TRUSTEES LTD. v. REGISTRAR OF TITLES, 5 Q.L.J.
47. (Full Court.)

[N.Z., Act of 1885, ss. 144, 191.]—Caveat—
Ministerial duty.—As to the power of the
District Land Registrar to lodge a caveat prohib-
iting dealings with land, see sub CAVEAT AGAINST
DEALINGS, supra col 54. In re TANNER, N.Z.L.R.
5 S.C. 102.

[VICTORIA, Act of 1862 (No. 140); cf. Act
of 1866, s. 35.]—Certificate of title, issue
of.—The Registrar-General is not bound to issue
a certificate of title to a purchaser from a Crown
grantee until the purchaser signs a receipt for
the duplicate Crown grant. FITZGERALD v.
ARCHEE, 1 W.W. & A'B. (L.) 40.

[N.Z., Act of 1885.]—Crown grant—Regis-
tration before issue of—Native land—Partition
order—Transfer.—A transfer of land originally
and before division held by natives under s. 17
of The Native Land Act, 1867, executed by a
native after the issue of an order of subdivision
in his favour, all times of rehearing having
elapsed, is registrable, although at the time of
such execution the Crown grant was not actually
registered; and is so registrable whether the
land be granted at the time of presentment for
registration or not. Ex parte DICKSON, 8 N.Z.L.R.
492.

[N.S.W., Act of 1862, s. 57.]—Duty on sale
by mortgagee—Sale by mortgagee—Proof of
default.—The Registrar is entitled under s. 57
of the Act of 1862, before registering a transfer
given by a mortgagee exercising power of sale, to
require proof of the mortgagee's default having
continued up to the time of the sale. Ex parte
HASSALL, 10 S.C.R. (N.S.W.) 292. (Full Court.)

[VICTORIA, Act of 1866.]—Endorsement on
title.—The practice of the Office of Titles of en-
dorsing on a certificate of title issued on a volun-
tary transfer, a reference to the liability of the
title to be defeated by creditors of the transferor,
is wrong. CROW v. CAMPBELL, 10 V.L.R. (E.)
186.

[N.Z., Act of 1870, ss. 41, 88, 89.]—Equitable
priorities.—It is not the duty of the District
Land Registrar to determine questions of equit-
able priority. KISSLING (DISTRICT LAND REGIS-
TRAR) v. MITCHELSON, N.Z.L.R. 3 C.A. 261.

[N.Z., Act of 1885, ss. 160-63.]—Execution
of instrument—Inquiries to be made of attesting
witness.—Semble, the Registrar ought to make
the inquiries indicated in ss. 160-3 of the Act,
and the attesting witness ought to be in a posi-
tion to answer them. Ex parte DAVY, 6 N.Z.L.R.
760. (Court of Appeal.)

[Q., Act of 1861, ss. 9, 35.]—Form of in-
struments.—Where the defendants executed
an instrument without objection and took
no steps to have any other form substituted, the
Court declined to inquire whether the Registrar
had exceeded the powers for altering the forms

of instruments conferred on him by s. 9. *MERRY v. AUSTRALIAN MUTUAL PROVIDENT SOCIETY, B.C.R., 2nd August, 1872. (Full Court.)*

[N.Z., Act of 1885, ss. 76, 212.]—Form of instrument—*Transfer*.—Although under the Act of 1885, s. 212, the Registrar may accept a form not printed and not supplied by the office, and that section may perhaps authorise a departure from mere form, it does not authorise a departure from the express requirements of s. 76. *PARAONE v. MATTHEWS, 6 N.Z.L.R. 744.*

[W.A., Act of 1874, ss. 19, 21, 120.]—Judicial discretion—*Bringing land under the Act*—*Absence of caveat*—*Power of commissioner to refuse registration*.—*Held*, that according to the true construction of ss. 19 and 21 of *The Transfer of Land Act, 1874*, the commissioner is not bound to register a title merely by reason of the issue of the prescribed notices and the non-appearance of a caveat. Such notices may produce information, and the commissioner in consequence thereof or of reconsideration, has a discretion to refuse to register, subject to the opinion of the Supreme Court under s. 129. *MANNING v. COMMISSIONER OF TITLES, 15 App. Cas. 195.*

[VICTORIA, Act of 1866, ss. 15, 106, 132, 135.]—Judicial discretion of Registrar—*Condition against assignment of Crown lease*—*Sale by sheriff*.—Under the Victorian *Transfer of Land Statute of 1866*, there is imposed upon the Registrar the judicial duty of examining into the validity of instruments presented to him for registration. He is not merely to accept all instruments in the order in which they are lodged without considering whether they are valid instruments or not. A condition prohibiting assignment is invalid if it purports to be inserted in a lease under s. 20 of *The Land Act of 1869* by virtue of s. 10 of that Act. Under s. 106 of *The Transfer of Land Statute*, the Registrar must register the first sheriff's transfer lodged with him if it be valid. If such transfer appears to conflict with a condition in the instrument of title which prohibits transfer, the Registrar must decide judicially whether such a condition is a valid one. *Ex parte BOND, 6 V.L.R. (L.) 458; 2 A.L.T. 94.*

[VICTORIA, Act of 1866, s. 132.]—Judicial discretion of Registrar—*Recalling certificate*—*Refusal to state grounds*.—Under the above section, the Registrar has a discretion, with which the Court will not interfere by compelling him to state his grounds, in determining whether it has appeared to his satisfaction that a certificate should be called in as issued in error. *Ex parte MUTUAL TRUST AND INVESTMENT SOCIETY, LTD., 11 V.L.R. 167. (Full Court.)*

[N.Z., Act of 1885.]—Judicial discretion—*Mortgage—Covenant in*.—Where the mortgage of a lease contained a covenant to purchase from the mortgagee all beer and stout to be consumed or sold on the demised premises during the term of the lease: *Held*, that the Registrar should have refused to register the instrument as a mortgage. *STAPLES v. MACKAY, 11 N.Z.L.R. 258.*

[N.Z., Act of 1870.]—Ministerial duty—*Right of Registrar to refuse to execute document amounting to breach of covenant*.—The District Land Registrar cannot refuse to register an assignment of a lease under *The Land Transfer*

Act on the ground that the assignment amounts to a breach of covenant. *In re DUGGAN, L.R. 2 S.C. 144.*

[N.Z., Act of 1885, ss. 166, 185.]—Ministerial duty—*Mortgage by company—Ultra vires*—*Execution—Duty of Registrar—Refusal to register—Assurance Fund*.—The Act of 1885 does not throw on the Registrar the duty of inquiring whether a mortgage by a company presented for registration is *ultra vires* of the company. If the instrument is in proper form, and the seal appears to have been properly affixed, the Registrar should accept it; and s. 185 is sufficient protection to the Assurance Fund if it turns out afterwards that the seal was not properly affixed, or that the instrument was not binding on the company. *In re KAIHU VALLEY RAILWAY CO. AND OWEN, 8 N.Z.L.R. 522. (Court of Appeal.)*

[Q., Act of 1861, ss. 3, 14, 34, 56, 187.]—Ministerial duty—*Mortgage—Refusal to register*—*Mandamus to Registrar-General*—*Ministerial act—Discretion—Special case*.—The Registrar's duties are ministerial, not judicial. He cannot refuse to register a deed which substantially conforms to the form required by the Act. He has a discretion, but the Court will enquire if his discretion has been properly exercised. An instrument purporting to be a mortgage was tendered to the Registrar-General for registration, but he, considering it to contain more than one mortgage, declined to register it. *Held*, that the provisions of s. 56 are mandatory, and that a *mandamus* must be issued to the Registrar-General to register the document. The circumstances under which a special case should be stated under s. 14 considered. *Ex parte ROXBURGH, R. v. REGISTRAR-GENERAL, 1 S.C.R. (Q. 1201). (Full Court.)*

[Q., ACTS OF 1861 AND 1877.]—Ministerial duty—*Foreign company—Transfer to*.—Where a foreign corporation seeks to register a transfer to them of land under Act 81, it is the duty of the Registrar-General to register the transfer, and if the parties concerned afterwards come to dispute, it is for them to carry the dispute to courts of law. It is not the duty of the Registrar-General to take such dispute into consideration. *MUTUAL ASSURANCE SOCIETY OF VICTORIA v. REGISTRAR-GENERAL, 1 Q.L.J. 177. (Full Court.)*

[Q., Act of 1861, ss. 33, 34, 43, 48, 91, 189; AMENDING ACT, 1877, ss. 14, 15, 35.]—Ministerial duty—*Priorities—Transfer—Writ of execution*.—On 27th August N., the registered proprietor, executed a transfer of his land to M., and on 6th September the memorandum of transfer and deed of grant were lodged for registration. On 2nd September, two writs of execution were lodged against the land; and on 7th September the Registrar entered them on the deed of grant and in the Register Book against the land. On motion for a writ of *mandamus* to command the Registrar to register the transfer: *Held*, that the Registrar has no authority to determine questions of priority between transferee and execution creditor, and that he was justified in refusing to register the transfer unless the transferee endorsed on it the two writs of execution as charges upon the land. *McGLONE v. REGISTRAR OF TITLES, 2 Q.L.J. 182.*

[Q., Act of 1861, s. 91.]—Ministerial duty—*Endorsement of liens and encumbrances*.—Where

a judgment is entered on the register against certain land, it is the duty of the Registrar to refuse to register a transfer of the certificate of title for the said land, unless the judgment is endorsed on the transfer. *McGlone v. Registrar of Titles*, 2 Q.L.J. 182, followed. *PERKINS v. REGISTRAR OF TITLES*, 3 Q.L.J. 47. (Full Court.)

[VICTORIA, ACT OF 1866, ss. 38, 50, 129 (III.), 135.]—**Ministerial duty—Mortgage—Discharge by trustees—Refusal of Registrar to register discharge as being unauthorised by trust.**—Where the discharge of a mortgage, of which trustees are the mortgagees, is presented for registration by the registered proprietor, the Registrar is not at liberty to refuse to register the discharge on the ground that it did not appear to his satisfaction that the dealing was authorised by the trust. *Ex parte CAMPBELL*, 9 A.L.T. 183.

[VICTORIA, ACT OF 1866, ss. 38, 129 (3).]—**Ministerial duty.—Administration Act (1872), ss. 6, 10—Commissioner of Titles.**—The Commissioner of Titles has no power to refuse to register a transfer from an executor or executrix to a devisee until proof has been given that all the debts owing to the testator's estate have been paid or duly provided for. *Ex parte WISEWOULD*, 11 A.L.T. 182. (Full Court.)

[N.Z., ACT OF 1885.]—**Ministerial duty—Production of certificate of title.—Foreign bankruptcy—Effect of same—Notice of Enforceable rights.**—A bankruptcy in Victoria confers no title recognisable in New Zealand to land in New Zealand, and what purports to be a transmission under such circumstances is not a registrable document. Where the Registrar has, on behalf of the applicant, a statutory transfer of land, with notice that another party has certain enforceable rights, and also holds the certificate of title, that, apart from the possession of the certificate, is no ground for refusing to register the transfer. Although there is no specific provision in *The Land Transfer Act*, 1885, that the production of the original grant or certificate of title is to be a condition precedent to the right to have a memorial of a transaction registered, such a provision must be inferred, and the Registrar, if he does not dispense with it under s. 38 of the Act, is not, in the absence of the certificate, bound to register a dealing. Where a certificate of title is put into the District Land Registrar's office by a claimant to the land for the purpose of asserting his claim, it is not competent for the Registrar, without his consent or without notice to him, to use the certificate to defeat his claim. *Ex parte BETTLE*, 14 N.Z.L.R. 129.

[N.S.W., ACT OF 1862, s. 25.]—**Practice—Title deeds of applicant proprietor—Order for inspection of—Notice.**—The Registrar-General is not entitled to notice of an application to a judge for an order under the above section for leave to inspect title deeds in his custody, and has no *locus standi* to move to set such order aside on the ground that it was made *ex parte*. *In re HEATH*, 14 W.N. (N.S.W.) 108. (Full Court.)

[N.Z., ACT OF 1885, s. 28.]—**Practice—Title deeds retained by Registrar—Order for production to stranger.**—A judge, under s. 28 of *The Land Transfer Act*, 1885, will not order production of title deeds in order to enable a plaintiff to frame his action, but may, at the trial of the action,

order the issue of a subpoena for their production in court. *WINMILL v. GALLIE*, 7 N.Z.L.R. 144.

[N.S.W., ACT OF 1862, ss. 11, 107.]—**Practice—Order directing Registrar-General to issue summons.**—For an order made by a judge in Chambers under s. 107 of the Act of 1862, directing the Registrar-General to issue a summons under s. 11, see *ex parte CARTER*, 1 W.N. (N.S.W.) 155.

[Q., ACT OF 1861, s. 14.]—**Practice—Grant of land—What included in parcels—Power of Registrar to take opinion of Court.**—In a Crown grant the land was described as "All that piece or parcel of land . . . containing by admeasurement 1280 acres, exclusive of swamp, be the same more or less, situated," &c. *Held*, that the grant included the swamp. Section 14 of the Act does not empower the Registrar-General to consult the Supreme Court on matters of administrative detail involving no question of law. *In re REAL PROPERTY ACT OF 1861*, 1 Q.L.J. Supp.) 57. (Full Court.)

[Q., ACT OF 1861, s. 14.]—**Practice—Special case—Counsel.**—Where a special case is stated the matter should be argued by counsel on both sides. *Ex parte LE GOULD*, 1 S.C.R. (Q.) 130. (Full Court.)

[Q., ACT OF 1861, s. 14.]—**Practice—Special case.**—The circumstances under which a special case should be stated under s. 14 considered. *R. v. REGISTRAR-GENERAL, Ex parte ROXBURGH*. (Full Court.)

[Q., ACT OF 1861, s. 14.]—**Practice—Master of Titles.**—The Court will only recognise the Master of Titles when he appears as the Master of Titles or on behalf of the Registrar of Titles. *Re WARRY'S WILL, Ex parte WARRY*, 1 S.C.R. (Q.) 136.

[VICTORIA, ACT OF 1866, s. 135.]—**Practice—Summons to Registrar to substantiate grounds of refusal—Finality of order.**—Upon a summons under s. 135 of the Act of 1866, the Court is not called upon to make a final order conclusive of the question at issue, as in a matter litigated *inter partes*. *Ex parte FOLK*, 6 V.L.R. (L.) 405. (N.B.—The Court might under this section direct an issue to be tried where a question of fact is involved.)

[N.Z., ACT OF 1885, ss. 69, 191 *et seq.*]—**Practice—Refusal of Registrar to call in certificate of title—Summons to compel Registrar to proceed.**—A Registrar cannot be compelled under ss. 191 *et seq.* of the Act of 1885 (which provide for the issue of a summons calling upon him to substantiate and uphold the grounds of his refusal to perform an act or duty) to proceed under s. 69 of the Act to require the surrender for cancellation of an instrument obtained through fraud or error. *PARAONE v. MATTHEWS*, 6 N.Z.L.R. 744.

[VICTORIA, ACT OF 1866, ss. 132, 135.]—**Practice—Refusal of Registrar to call in delivery of certificate of title—Refusal of Court to interfere—Discretion of Registrar.**—Under s. 132 of the Act of 1866 the Registrar has a discretion in determining whether it has appeared to his satisfaction that a certificate of title should be called in as issued in error, with which discretion the Court will not interfere by compelling him to state his grounds. *Ex parte MUTUAL TRUST AND*

INVESTMENT SOCIETY, 11 V.L.R. 166; 6 A.L.T. 85. (Full Court.)

[VICTORIA, ACT OF 1890, ss. 145, 209.]—Practice—*Mandamus on Registrar of Titles to compel registration.*—The applicant was the unregistered transferee of leasehold land. The Registrar of Titles refused to register the transfer of such land on the ground that he was made a party to an action brought by a third party with respect to the land. On an application made by the applicant for mandamus to compel the Registrar to register the transfer: *Held*, that the ground alleged by the Registrar was not sufficient to justify him in refusing to register the transfer. *Ex parte CLARK*, 17 V.L.R. 82; 12 A.L.T. 163.

[VICTORIA, ACT OF 1866, s. 135.]—Practice—*Mandamus unnecessary.*—This section renders it unnecessary to obtain a mandamus against the Registrar to compel him to issue a certificate of title, because if the decision of the Court is favourable to the applicant, he should issue a certificate of title without further order. *Ex parte PATERSON*, 4 A.J.R. 26.

[VICTORIA, ACT OF 1866, s. 135.]—Practice—*Refusal of Registrar to issue certificate of title to purchaser from sheriff.*—A purchaser from the sheriff was refused a certificate of title by the Registrar on the ground of non-compliance with statutory formalities necessary in connection with sheriff's sale. On a summons under s. 135: *Held*, that these formalities had been sufficiently complied with. *Ex parte ROSS*, 2 V.R. (L.) 10; 2 A.J.R. 19.

[VICTORIA, ACT OF 1866, ss. 132, 135.]—Practice—*Refusal of Registrar to call in certificate—Mandamus to Registrar.*—Where the Registrar has refused to call in a certificate of title under the powers given him in s. 132, the Court will not order him to do so under s. 135 unless the certificate of title is proved to have been issued in error or through fraud, or to contain a misdescription of the land. *In re O'CONNELL*, 6 A.L.T. 85, *Ex parte SLACK*, 4 A.J.R. 114.

[N.S.W., ACT OF 1862, ss. 122, 126.]—Practice—*Summons to correct instrument—Limitation of actions.*—Section 122 of *The Real Property Act* does not operate to prevent the Registrar from applying to the Court for an order directing the holder of a certificate of title to deliver it up for the purpose of amending it after the lapse of six years. *In re GRAHAM*, 3 W.N. (N.S.W.) 24.

REGISTRATION.

Conclusive effect of

See CERTIFICATE OF TITLE (B.).

See CROWN GRANT.

See INSTRUMENTS AND DOCUMENTS OF TITLE.

Legal interest passes to purchaser upon

See MORTGAGE—Power of sale.

NATIONAL BANK v. UNITED HAND IN HAND Co., 4 App. Cas. 391.

Of mortgage—not condition precedent to exercise of power of sale

MATHIESON v. MERCANTILE, &C., Co., LTD., 11 A.L.T. 154; 12 A.L.T. 220; 17 V.L.R. 271.

REMEDIES FOR DEPRIVATION.

See ADVERSE POSSESSION.

See BOUNDARIES.

See CERTIFICATE OF TITLE.

See CROWN GRANT.

See FRAUD.

Certificate of title obtained by fraud—

Relief—Correction of title.

See CERTIFICATE OF TITLE.

CAMPBELL v. JARRETT, 7 V.L.R. (Eq.) 137.

Wrong land sold by mistake.

See also ERROR.

ASHLEY v. COOK, 2 A.L.T. 2, 50.

Wrong land sold by sheriff by mistake.

See HASSETT v. COLONIAL BANK OF AUSTRALASIA, 7 V.L.R. (L.) 380; 3 A.L.T. 38, *infra*.

REMEDIES FOR DEPRIVATION.

A. EJECTMENT.

B. ACTION FOR DAMAGES.

C. BONA-FIDE PURCHASER.

D. ASSURANCE FUND.

A. EJECTMENT.

(See also ADVERSE POSSESSION.)

(See also BOUNDARIES.)

(See also FRAUD.)

[S.A., ACT OF 1861, s. 124.]—Ejectment—“Other action for the recovery of land.”—The words “or other action for the recovery of land” following the words “action of ejectment” in s. 124 of the above Act, refer to actions at law in the nature of ejectment which may by possibility come under the cognizance of a Court of Equity, but do not include a suit for specific performance. *CUTBERTSON v. SWAN*, 11 S.A.L.R. 102. (Full Court).

[W.A.]—Ejectment—Practice.—Where the plaintiff in ejectment claimed that the defendant was estopped by payment of rent from denying his title: *Held*, that the defendant, who alleged receipt of rent by plaintiff as collector, was entitled to defend on the merits in the ordinary way, and that plaintiff was not entitled to judgment under O. XIV. *JAMES v. STONE*, 1894 A.C. 122.

[S.A., ACT OF 1861.]—Ejectment—*Equitable plea.*—*Semble*, that an equitable plea cannot be pleaded in an action of ejectment. *DYKE v. ELLIOT*, 4 S.A.L.R. 128. (Full Court).

[VICTORIA, ACT OF 1866, s. 138 (4).]—Ejectment against fraudulent proprietor.—*Mesne profits—Form of order.*—Where the owner of land had been deprived of it by the defendant having brought it under the Act, and obtained a certificate of title in his own name, by means of false and fraudulent declarations, the Court would not order the Registrar to cancel such certificate of title, he not having been made a party to the action; but it ordered the defendant to give up possession of the land, with mesne profits for the time he had been in occupation; also to deliver up the duplicate certificate of title, and to execute a transfer to the plaintiff. The defendant was

not allowed the expense of bringing the land under the Act. *OGLE v. AEDY*, 18 V.L.R. 461.

[Q., Act of 1861, ss. 44, 60, 88, 123, 126.]—*Ejectment*.—R. purchased a block of land, and registered his title and obtained a certificate of title. In 1870 M. purchased from the A.M.P. Society a corner piece of this land with stores thereon. R., after purchasing the land, mortgaged the whole of it to a person who subsequently died, leaving a will by which he appointed the plaintiff O. his executor. Default was made in payment of principal and interest. M. obtained a certificate of title from the Registrar. He never asked the A.M.P. Society for a certificate or for any title at all, as he brought the land under *The Real Property Act*. Two certificates were, therefore, in existence for the portion of land in dispute. O. brought an action of ejectment against M., claiming as mortgagee under a prior certificate of title issued to R. *Held*, that the plaintiff as executor was entitled to bring ejectment, default having been made in payment of principal and interest. On the further question whether the defendant was protected against the action under the proviso to s. 126, the Court *held* that if a purchaser *bonâ fide* for valuable consideration (as M. was found by the jury to have been) purchased from a registered proprietor, he would be protected under s. 126 against the action, but the title of the A.M.P. Society to this piece of land not having been brought under the Act, and they not having obtained a certificate of title, M. was not protected by the proviso. *OELEERS v. MERRY*, B.C.R. 13th March, 1872. (Full Court)

[Q., 25 Vic. No. 14, s. 123.]—*Ejectment—Mortgage*.—The words "except in the case hereinbefore provided of a mortgagee or encumbrancee against a mortgagor or encumbrancer," in s. 123, are to be treated as surplusage. *OELEERS v. MERRY*, B.C.R., 13th March, 1872. (Full Court.)

B. ACTION FOR DAMAGES.

(See also FRAUD.)

[Q., Act of 1862.]—*Certificate of Title—Error in title—Non-investigation of title, &c.—Covenant for title—Costs*.—M. purchased a piece of land from the Australian Mutual Provident Society, and brought it under *The Real Property Act*, and received a certificate of title. He then discovered that the land was comprised in another certificate of title. He was ejected by the representative of the registered proprietor. In an action against the vendors it was *held* that he was entitled to a sum for the loss of the use of the purchase money from the date of payment to judgment at the rate of 8 per centum, but not for the value of the improvements on the land, nor for the costs of defending the action for ejectment, there being no covenant for quiet enjoyment, nor for indemnity, and on the ground that after notice from the registered proprietor he had defended at his own risk. As he had not investigated the defendant's title before registration, the costs of registration were disallowed. *MERRY v. A.M.P. SOCIETY*, B.C.R., 2nd August, 1872. (Full Court.)

[Q., Act of 1861, ss. 48, 56, 67, 139.]—*Covenants implied in a reference to a certificate of title on the sale of land—Non-investigation of title by transferee—Certificate of correctness*

for registration—Transferor not the registered proprietor.—A representation contained in a reference to the number of a certificate of title does not amount to a covenant that the land is described in the certificate. Both parties have equal means of knowing the fact. The duty is cast upon the alienee to certify to the correctness of the indenture. Where an indenture is made for the purpose of conveying a piece of land, and such purpose is unattainable because of non-registration of the vendor, there is no covenant for further assurance. *MERRY v. A.M.P. SOCIETY*, B.C.R., 2nd August, 1872. (Full Court.)

[VICTORIA, ACT OF 1866, ss. 49, 106, 138, 144.]—*Misdescription of land by execution creditor—His liability for damages—Prior grant or certificate superseded by certificate of title issued to purchaser from sheriff*.—The defendant bank brought an action against one J. H., and having obtained judgment, issued execution and served a copy of the writ on the Registrar, but the accompanying statement (under s. 106) specified the land of another J. H. (the plaintiff), which land was sold under the writ and bought by the bank, which became registered as proprietor. This was an action for damages for deprivation of the land, and plaintiff succeeded on the ground that the registration of the bank as proprietor had the effect of superseding plaintiff's certificate of title. *HASSETT v. COLONIAL BANK OF AUSTRALASIA*, 7 V.L.R. (L.) 380; 3 A.L.T. 38. (Full Court.)

[VICTORIA, ACT OF 1866, s. 144.]—*Vendor and purchaser—Compensation for excess—Land brought under the Act*.—Where land has been sold by metes and bounds, at so much per acre, the acreage comprised within such metes and bounds being correctly stated in the contract, and the price stated accordingly, and a conveyance has been executed, the vendor is entitled to be paid for a substantial excess in quantity not arising from error in the measurements given, and lying outside such boundaries, though such excess had been occupied by the vendor as part of the farm described as for sale and the purchaser had been let into possession of it. The purchaser having brought under the Act such excess along with the land conveyed, without notice to or knowledge of the vendor, and having obtained the issue of a certificate of title in his own name: *Held*, that the vendor was entitled to recover from the purchaser the value of the excess land at the time of purchase, either under the usual condition of the contract of sale as to compensation for excess, or as damages under s. 144 of *The Transfer of Land Statute*. *MONAGHAN v. GLEESON*, 13 V.L.R. 384; 8 A.L.T. 197.

C. BONA-FIDE PURCHASER.

(See also FRAUD—(D) Forged Instruments, and (F) Innocent Purchaser.)

[Q., Act of 1862, ss. 44, 126.]—*Ejectment—Purchase of land not under the Act—Registered proprietor*.—A purchaser *bonâ fide* for valuable consideration from a registered proprietor is protected, although the vendor may have been registered in error. A purchaser from a vendor not registered brings the land under the Act at his peril. *OELEERS v. MERRY*, B.C.R., 6th March, 1872.

[Q., Act of 1861, s. 123.]—*Ejectment—Forged transfer*.—An action for ejectment does not lie against a *bonâ fide* purchaser for value

from a person registered as proprietor by means of a forged transfer. *BAILEY v. CRIEBB*, 2 Q.L.J. 42.

[VICTORIA, ACT OF 1866, s. 145.]-Ejectment—*Bona fide purchaser—Fraud.*—The object of the above section is to protect honest purchasers for value. If they do so purchase, the certificate issued to them is good even against the proper owner. If an owner is deprived of his land he has a remedy against the person who committed the fraud or against the Assurance Fund. *MAIN v. ROBERTSON*, 7 A.L.T. 127. (Full Court.)

[N.S.W., ACT OF 1862, s. 115 (5).]-Ejectment *Bona fide transferee—Registered proprietor.*—The question whether a registered proprietor of the land is "a transferee thereof *bona fide* for value" within the meaning of subs. 5 of s. 115 of *The Real Property Act* must be determined in most cases by inquiring whether such transferee had notice or knowledge or the means of knowledge that the land so transferred to him, or a part thereof, was by misdescription of boundaries wrongly included in the certificate of the transferor. *HAY v. SOILING*, 16 N.S.W.L.R. (L.) 61. (Full Court.)

[VICTORIA, ACT OF 1866.]-Forged transfer—*Innocent purchaser.*—A registered proprietor under the Act, being a purchaser for value and without notice of the forgery, acquires by virtue of the Act an indefeasible title to the estate or interest of which he is registered, even although such registration may have been effected by means of a forged instrument. *O'CONNOR v. O'CONNOR*, 9 A.L.T. 117.

[N.Z., ACT OF 1885, s. 66.]-Forged conveyance—*Fraud—Innocent purchaser obtaining title under the Act.*—Where a signature to a deed of conveyance is, without the knowledge of the purchaser, a forgery, and the land thereby conveyed is brought under *The Land Transfer Act*, the purchaser's title to the land is unimpeachable. *COLEMAN & CLARKE v. RIRIA PUWHANGA*, N.Z.L.R. 4 S.C. 230.

[N.Z., ACT OF 1885, ss. 10, 190.]-Native land—*Certificate issued on void order of freehold tenure in respect of native land—Mortgage—Land subject to the Act.*—S. 10 of the Act of 1885, as to what land is to be deemed subject to the provisions of the Act, is not mandatory for all purposes, and the words "under the provisions of this Act," in s. 190, ought to be read as qualifying the words "purchaser or mortgagee," and the section construed as if the words "of land" had been transposed so as immediately to follow the words "purchaser or mortgagee." *In re CARGILL* (7 N.Z.L.R. 491) disented from. *In re OKIRI BLOCK*, 10 N.Z.L.R. 677.

[N.Z., ACT OF 1885, ss. 55, 189, 190.]-Registration—*Void instrument—Lease in excess of statutory powers—Fraud—Protection of purchasers—Bona fides—Knowledge—Constructive notice—Fraud of solicitor or agent—West Coast Settlement Reserves Acts of 1881, 1884, and 1887—Regulations of 1883 thereunder.*—C. was the holder, under the provisions of *The West Coast Settlement Reserves Acts* of 1881, 1884, and 1887, of a lease from natives, granted to him in 1878, and confirmed by the Governor-in-Council in 1888. In 1889 he surrendered this lease to the Public Trustee and obtained a new one,

executed by the Public Trustee, purporting to act under the above Acts on behalf of the then native owners. The Crown grant to the native owners had previously been registered under the provisions of *The Land Transfer Act*. The circumstances under which the surrender of the old lease was accepted and a new one executed by the Public Trustees, and the terms of the new lease, were such as to make the new lease invalid, as not being in compliance with or authorised by the provisions of *The West Coast Settlement Reserves Act* as interpreted by the Court of Appeal in the case of *Te Moanaroa v. Public Trustee* (10 N.Z.L.R. 281), decided in the year 1891. The new lease was registered under *The Land Transfer Act*, 1885, in 1889, shortly after its execution. *Held*, that the registration of a void instrument such as the lease, although there was no fraud, was not effectual to create the estate which it purported to create, or transfer in favour of C., the person claiming immediately under it, and on whose behalf it had been presented for registration. In the year 1889, and shortly after the registration of the lease of 1889 to C., it was purchased for value by L., and a transfer of it to L. was registered. *Held*, that "*bona fides*" in s. 190 of *The Land Transfer Act*, 1885, has its natural meaning and imports the absence of actual fraud; that to constitute fraud there must be knowledge—not necessarily full knowledge, but at least a suspicion or inkling—that wrong is being done; that until the decision of the Court of Appeal in *Te Moanaroa's* case (*supra*) the public were entitled to assume that the regulations made by the Governor-in-Council under *The West Coast Settlement Reserves Acts* were valid, and that the Public Trustee was justified in acting upon them and upon his own interpretation of the statutes, and that L. was therefore protected by s. 190, and had acquired an indefeasible title as registered leaseholder. *Quære*, whether the fraud of the solicitor or agent of a purchaser may not in some cases be imputable to the client, so as to deprive the latter of the character of a *bona fide* purchaser within the meaning of s. 190. *KATENE TE WHAKARURU v. PUBLIC TRUSTEE. TE MIRA v. PUBLIC TRUSTEE*, 12 N.Z.L.R. 651.

D. ACTIONS AGAINST ASSURANCE FUND.

[N.Z., ACT OF 1885.]-Bare legal estate—*Evidence of old document.*—The plaintiff in an action to recover damages against the Assurance Fund must prove actual loss or damage. Where the plaintiff's ancestor had sold land, but in consequence of the conveyance having been defective a bare legal estate remained in him: *Held*, that his heir could not maintain an action for being deprived of the bare legal estate by the land being brought under the provisions of *The Land Transfer Act*, 1885. Where the plaintiff claims against the Assurance Fund, it is sufficient if the Registrar proves that the plaintiff's ancestor sold the land, without showing the title of the person who brought the land under the Act. *BLACKWELL v. DAVY*, 8 N.Z.L.R. 129.

[VICTORIA, ACT OF 1866.]-Forged Transfer—*Fictitious transferee—Forged mortgage—Effect of registration.*—The Victorian Transfer of Land Statute protects those who derive a registered title *bona fide* and for value from a registered

owner. Accordingly they need not investigate the title of such owner, for they are not affected by its infirmities. But they must ascertain at their own peril his existence and identity, the authority of any agent to act for him, and the validity of the deed under which they claim. The name of a registered owner having been removed in favour of a fictitious and non-existing transferee as the result of a forged transfer, a mortgage purporting to have been executed by such transferee was subsequently put upon the register by *bona fide* mortgagees. In a suit by the true owners against the Registrar, the mortgagors, and the perpetrator of the fraud: *Held*, (a) that the plaintiff's name must be restored to the register; (b) that the mortgage was invalid and did not in favour of the mortgagee constitute an encumbrance on the plaintiff's title, though under the Act it would have that effect in favour of a *bona fide* registered assignee thereof. *GIBBS v. MESSER*, 1891 A.C. 248.

[N.Z., Act of 1870.]—*Laches—Delay—Fraudulent bringing of land under the Act—Dealings without notice.*—The owner of land died intestate. His son, representing himself as the owner, fraudulently brought the land under the provisions of *The Land Transfer Act* and mortgaged it, and subsequently made default in payment of the mortgage money, in consequence of which the land was sold. The mortgagee and the purchaser had no notice of the fraud. Subsequently (four years after the death of her husband) the widow of the deceased owner took out letters of administration. *Held*, that she was not precluded by her delay from recovering the value of the land from the Assurance Fund. *ANDERSON v. DAVY*, L.R. 1 S.C. 302.

[Q., Act of 1864, ss. 48, 126, 127.]—*Laches—Person deprived of land—Fraud—Mortgagee—Bona fides—Memorandum of transfer in blank.*—G., the registered proprietor of an estate in fee simple of land under the Real Property Acts, borrowed money from L. and purported to sign a receipt for the same, whereas he in fact signed a memorandum of transfer in blank of the land which was to be the security for the loan. On offering to pay back the loan it was discovered that L. had lodged the certificate of title and memorandum of transfer with a banking company. The name of the vendor, consideration, and attestation clause, were afterwards inserted by L. before the document was brought to the bank. L. affixed his signature on the memorandum of transfer in the presence of the bank's officials. The bank made no inquiry as to L.'s authority to fill in the blanks. A certificate was issued in L.'s name and pledged with the bank. *Held*, that G. had been deprived of the land by fraud, but that he allowed L. to remain in possession of the documents, and by so doing induced the defendant to believe that L. was entitled to deal with the land. *Held*, also, that he was not entitled to recover from the Assurance Fund, as the bank by making inquiries ought to have discovered the fraud, and could not sustain their title as against the plaintiff. *Semble*, a memorandum of transfer in blank is absolutely void. *GILBERT v. BOURNE*, 6 Q.L.J. 270.

[VICTORIA, Act of 1866, ss. 27, 146.]—*Land brought under Act—Omission of Registrar to make endorsement upon title deeds—Action against*

Registrar.—T., the owner of land, applied to bring it under the Act, and lodged the title deeds. The Registrar omitted to endorse thereon, as required by s. 27, a memo. that the land was brought under the Act. The plaintiff afterwards advanced money to T. on the security of the land as if it were not under the Act, without notice that T. had parted with the land under the provisions of the Act. T. having become insolvent, the plaintiff brought an action against the Assurance Fund claiming damages on account of the money advanced to T. *Held*, that s. 146 only applied to a loss by deprivation of an actual interest in land; that the fund was protected against all claims for which the sufferer could reasonably be required to seek redress against any other person, or which did not directly arise from the operation of the Act; that the section did not apply to a loss of an expectancy of an interest sustained by a person through a fraud which another person was enabled to commit owing to the neglect of the Registrar; that O.'s remedy was against T. Judgment for defendant. *OAKDEN v. GIBBS*, 8 V.L.R. (L.) 380. (Full Court.)

[Q., Act of 1861, ss. 3, 126, 128.]—*Life estate with power of appointment—Defective exercise of power—Issue of certificate for fee simple instead of for less interest—Bona fide mortgagee for value—Remainder-men deprived of land—Action by them against Assurance Fund—Measure of damages—Deeds Registration Act of 1843 (7 Vic., No. 16), s. 16.*—O. H. by his last will devised certain lands under the Real Property Act to his son J. J. H. for life, and after his death to such of the testator's children or grandchildren as J. J. H. should by deed or will appoint; in default of appointment to the issue of J. J. H. in *infinitum*. After his father's death J. J. H. made an appointment by deed in his own favour, in the following terms: "He doth hereby absolutely and irrevocably appoint the said hereditaments to himself, as mentioned in the said recited will, for such life," and applied to the Registrar of Titles to have transmission by death of the land granted to him, and for a certificate of title as proprietor of the land in fee-simple. These applications were complied with, and J. J. H. executed a bill of mortgage of the land *bona fide* for value for £1500 and further advances, for the purpose of making improvements on the land. The total amount advanced was about £8000. In an action by the children of J. J. H., deceased, by their next friend, against the Registrar of Titles, to recover damages out of the Assurance Fund: *Held*, that the plaintiffs were entitled to recover damages for deprivation, but that the wrongful acts had improved the land, and that damages should only be awarded by way of compensation for the loss actually sustained, which was fixed by the jury at £1630. *HAYES v. BOURNE*, 7 Q.L.J. 146.

[S.A., Act of 1861, s. 125.]—*Limitation of action—Deprivation of land brought under the Act—Time within which action against should be brought—Compensation.*—The deprivation contemplated by s. 125 of *The Real Property Act*, 1861 occurs immediately on the bringing of land under the provisions of the Act, and the person deprived by the same being so brought under the Act must bring his action within six years from

the date of such deprivation, though he may not have notice or knowledge within that period that the land has been so brought under *BONNIN v. ANDREWS*, 12 S.A.L.R. 153. (Full Court.)

[VICTORIA, ACT OF 1866, ss. 66, 149; ACT OF 1869, s. 9.]—*Limitation of Action—Dower.*—In an action by a widow to recover damages out of the Assurance Fund for loss of dower, where the cause of action had accrued within fifteen years: *Held*, that under s. 9 of the Act No. 353 she was entitled to the damages, and that s. 66 of *The Transfer of Land Statute* did not apply to this case, in which the husband was seized in fee of Crown land alienated in 1851, but had never become registered as proprietor. *MOYLE v. GIBBS*, 9 V.L.R. (L.) 26; 4 A.L.T. 148. (Full Court.)

[N.Z., ACT OF 1870, ss. 130, 132, 133, 135.]—*Misfeasance—Limitation of action—Proof of misfeasance not necessary—Date of deprivation—Date of issue of certificate.*—Section 133 of *The Land Transfer Act*, 1870, does not control ss. 130 and 132 of that Act, and the Assurance Fund may be liable under those sections, though there has been no omission, mistake, or misfeasance of the Registrar or his officers. The six years within which an action must be brought against the Registrar under s. 135 of the Act runs from the date of deprivation of land by the wrongful issue of a certificate of title—i.e., from the date of its issue. *RUTU PEHI v. DAVY*, 9 N.Z.L.R. 134.

[Q., ACT OF 1861, ss. 126, 127.]—*Misfeasance—Proof of, unnecessary.*—It is not necessary to prove misfeasance on the part of the Registrar of Titles to succeed in an action under ss. 126, 127 of *The Real Property Act* of 1861. *QUEENSLAND TRUSTEES LTD. v. REGISTRAR OF TITLES*, 5 Q.L.J. 46. (Full Court.)

[N.Z., ACT OF 1885.]—*Negligence of officer—Contributory negligence of plaintiffs—Issue of two certificates—Omission to search register is notice.*—Where, through the negligence of the Registrar, a second certificate of title was issued, the first certificate of title being in force, if the party to whom the second certificate was issued was guilty of contributory negligence, his certificate of title will be called in and cancelled, and he will have no claim on the Assurance Fund. The doctrine of contributory negligence is applicable to claims under *The Land Transfer Act*, 1885. The Registrar, having subsequently discovered the mistake, took no effective steps to rectify it, at a time when he might have saved part of the loss consequent on the original mistake. *Held* (*dissentiente Prendergast C.J.*): That this gave no cause of action, as the loss was caused by the original negligence. *Semble*, the omission to search the register before dealing with land under the Land Transfer Act is negligence. *Semble*, also, the register is notice to all persons dealing with land of that which would be discovered by a search. *MILLER v. DAVY*, 7 N.Z. L.R. 515. (Court of Appeal.)

[Q., ACTS OF 1861 AND 1877.]—*Person deprived of land—Bona fide mortgagee.*—The executrix of a will, who was also a devisee of land under the Real Property Act, took out probate and obtained transmission, and mortgaged the land to a bank for £1000 and further advances. Probate of the will was revoked, and a trustee

company appointed administrator. The bank were *bona fide* mortgagees without notice. Default having been made by the mortgagor, the bank gave notice to the administrator of their intention to sell. The administrator sued the mortgagor and obtained judgment, and had her adjudicated insolvent, and there were no assets in the estate except the equity of redemption. *Held*, that the administrator was a person deprived of an interest in land, and entitled to be indemnified out of the Assurance Fund to the amount necessary to redeem the mortgagee. *QUEENSLAND TRUSTEES, LTD., v. REGISTRAR OF TITLES*, 5 Q.L.J. 46. (Full Court.)

[VICTORIA, ACT OF 1862, ss. 116, 118, CF. ACT OF 1866, ss. 14, 146.]—*Personation.*—A person fraudulently personated the plaintiff as the owner of land and brought it under the Act, and had a purchaser from himself registered as proprietor. Plaintiff subsequently brought this action against the Registrar to recover damages from the Assurance Fund. *Held*, that the action did not lie, but should have been brought against the personator, although he was never registered as proprietor. *FOTHERINGHAM v. ARCHER*, 5 W.W. AND A.B. (L.) 95. (Full Court.)

[Q., ACT OF 1862, s. 127.]—*Pleading.*—The statement of claim in an action to recover damages from the Assurance Fund must show that the land has passed into the hands of a registered proprietor from whom the plaintiff cannot recover it. *Cox v. BOURNE*, 7 Q.L.J. 53. (Full Court.)

[Q., ACT OF 1861, s. 127.]—*Remedies against "person deriving benefit" from fraud must be exhausted—Measure of damages recoverable—Costs—Form of judgment and certificate.*—C., the registered proprietor of certain land, having been induced by L. to lodge with him as security for a loan of £7 the deed of grant of the land, L., by a forged transfer, procured himself to be registered as proprietor of the land. L. obtained a loan from D., to whom he transferred the land as security; D. obtained a loan from W., to whom he also transferred the land as security. The fraud having been discovered, and L. having become insolvent, C. brought an action under s. 127 of *The Real Property Act* of 1861 against the defendant Bourne, the Registrar of Titles, and in his statement of claim alleged that he had been deprived of his land by fraud, and that the transfers to D. and to W., both of whom were joined as defendants, had been made and registered *bona fide* and for value, and he claimed damages from the Assurance Fund to the amount of the value of the land, or in the alternative to redeem the mortgage and to have the necessary money provided from that fund. Neither of the defendants D. and W. put in a statement of defence, but the defendant the Registrar of Titles put plaintiff to proof of his whole case. On the hearing of the action, plaintiff was permitted to amend his statement of claim by alleging, in the alternative, want of *bona fides* on the part of D. and W., and claiming consequential relief. The jury found that L. and D. had acted in collusion, and that D. had derived benefit from L.'s fraud. Judgment was given for plaintiff for redemption of the mortgage upon payment to defendant W., within a fixed time, of the principal and interest due under the mortgage, and her costs of the

action; and against defendant D. for an amount equal to such principal, interest, and costs, with the plaintiff's costs of the action. D. was ordered to pay defendant Bourne's costs of the action, and further consideration of the action was reserved as between the plaintiff and defendant Bourne, with liberty to both parties to apply. The sheriff having made a return of *nulla bona* to a writ of *fi. fa.* issued by the plaintiff against the lands and goods of defendant D. to enforce this judgment, plaintiff applied for judgment against defendant Bourne for the same amount for which judgment was given against defendant D., and for a certificate, under s. 127, to entitle him to be paid from the Assurance Fund the amount of the damages and costs which he had failed to recover from defendant D. The amount of W.'s mortgage, together with her costs, exceeded the value of the land. *Held*, that where a person has been deprived of land by fraud, and the actual and immediate perpetrator of the fraud has died, absconded, or become insolvent, his right to recover against the Assurance Fund is complete and is not affected by the fact that a third person was also a party to the fraud and derived benefit from it, and that therefore plaintiff was entitled in this action to judgment against defendant Bourne, although he had not, before action, exhausted his remedies against defendant D. and had her adjudged insolvent. *Held*, further, that the word "costs" in s. 127 includes all expenses of litigation necessarily incurred in establishing a plaintiff's claim to damages, and that as in the present case W. was a necessary party to the action, and, as a mortgagee, was entitled to her costs of the action for the redemption of her mortgage, such costs were part of plaintiff's costs of action, and that the plaintiff was entitled to recover from the Assurance Fund the amount of principal and interest payable by him to W., and also his costs of action, including the costs payable by him to W. *Cox v. Bourne*, 8 Q.L.J., 66.

[N.Z., Act of 1885.]—*Search—Duty as to—Inquiry as to instruments received but not yet entered.*—A purchaser of land under the provisions of the Land Transfer Act, making search of the title, ought not to rely on a mere inspection of the register, but should also inquire of the officers whether any instruments have been produced for the purpose of registration but not yet entered on the register. He ought also to bear in mind that the transferor's interest may at any time be affected by the registration of an instrument between his search and the presentation of his instrument for registration. A purchaser having made a search by inspection of the register without any inquiry as above mentioned, and having, on the same day, accepted a transfer and paid her purchase money: *Held*, that she had no claim against the Assurance Fund for loss of the purchase money by reason of there having been a charging order against the land, which had been produced for registration but not entered upon the register at the time of her search. *In re Jackson*, 10 N.Z.L.R. 148.

REMOVAL OF CAVEAT.

See CAVEAT AGAINST DEALINGS.

RENT.

Meaning of term

See INTERPRETATION—Words.

Suspension of, where premises destroyed

See LEASE.

HILL v. COX, 1 Q.L.J. 78.

RENUNCIATION.

Of trustees under a will

See TRANSMISSION.

RESERVATION.

In certificate of title

See CERTIFICATE OF TITLE—(B)

Conclusive effect.

In Crown grant

See CROWN GRANT.

RESERVE.

Plan of township deposited, showing reserve

See EASEMENT.

RESTRAINT OF TRADE.

See MORTGAGE—Discharge.

RIGHT TO BEGIN.

See PRACTICE.

RIGHT OF REPLY.

See PRACTICE.

RIGHT OF WAY.

See EASEMENT.

Semble, a person entitled to a right of way is entitled to lodge caveat against application

See BRINGING LAND UNDER ACT.

In re Schmid v. Field, 15 S.A.L.R.

48, *In re Hovison* (Shepherd Smith,

Caveator), 14 W.N. (N.S.W.) 3; 18

N.S.W.L.R. (L.) 300.

ROAD.

See EASEMENT.

Dedication of

See BRINGING LAND UNDER ACT—

Trial of issues.

Application to bring under Act

See BRINGING LAND UNDER ACT.

In re Cargill, 7 N.Z.L.R. 481. *In re*

Innes, 12 N.S.W.L.R. 180. *Tierney*

v. Loxton, 12 N.S.W.L.R. 308.

SALE.

Under power of sale in mortgage

See MORTGAGE—Power of sale.

SALES BY SHERIFF.

Of lease subject to condition not to assign

See also LEASE.

Priority of equitable mortgage

See also MORTGAGE — *Equitable mortgage.*

SALES BY SHERIFF.

- A. APPLICATION OF WRIT.
- B. EFFECT OF SALE.
- C. DUTIES OF REGISTRAR.
- D. PRIORITIES.
- E. PROCEDURE.

A. APPLICATION OF WRIT.

[VICTORIA, ACT OF 1866.]—Duty of Registrar—*Covenant not to assign lease.*—Notwithstanding a covenant in a lease not to assign, the sheriff can sell the lessee's interest in the lease, and the Registrar must register the sheriff's transfer. *Ex parte ELLISON*, 5 V.L.R. (L.) 59. (Full Court.)

[Q., ACT OF 1861, s. 91.]—Writ against goods and chattels—*Supreme Court Act, 1861* (25 Vic., No. 13, s. 88).—A writ directing the sheriff to levy upon goods and chattels does not authorise him by virtue of the above section to levy upon lands. *Ex parte BANK OF AUSTRALASIA*, 1 S.C.R. (Q.) 126. (Full Court.)

[Q., ACT OF 1861, s. 91.]—Writ against administratrix—*Execution—Registration of fi. fa. on land of which administratrix is, as such, the registered proprietor—Restriction on alienation of land—Involuntary alienation—Intestacy Act of 1877* (41 Vic., No. 24).—The prohibition against alienation of land by the administrator without consent of beneficiaries or leave of the Court, contained in s. 24 of *The Intestacy Act of 1877*, does not extend to an involuntary alienation by process of law. Where an administrator of the land of an intestate is registered as the proprietor of land *qua* administrator, the Registrar of Titles is bound to register a writ of execution against such land issued upon a judgment obtained against the administrator in his representative capacity. *R. v. BOURNE, Ex parte SPRESSER*, 8 Q.L.J. 14. (Full Court.)

[VICTORIA, ACT OF 1890, s. 139.]—Writ against executor—*Land registered in name of—Registration of transfer from sheriff.*—A judgment obtained against a person in his individual capacity cannot be registered against land held by him as executor under *The Transfer of Land Act, 1890*. *BALDING v. NICHOLAS*, 19 V.L.R. 110.

B. EFFECT OF SALE.

[S.A., ACT OF 1861.]—Purchaser, rights of.—A purchaser of a lease from the sheriff, who sells by virtue of a writ of *fi. fa.*, is estopped from setting up any informality in the transfer where he has subsequently paid rent to the lessor. *Semble*, that since the Real Property Act recognises no estate which does not appear on the register, the existing form of transfer from the sheriff confers no valid title on the purchaser. *UMPHERSTONE v. WADEHAM*, 6 S.A.L.R. 17. (Full Court.)

[S.A., ACT OF 1861.]—Purchaser, rights of.—The sheriff has no power to convey or transfer to the purchasers land under *The Real Property Act of 1861* sold by him by virtue of a writ of *fi. fa.* And (*per* Wearing J.): *Quare*, whether he has power to sell land under that Act? *PALMER v. ANDREWS*, 7 S.A.L.R. 19; 8 S.A.L.R. 281. (Full Court.)

[Q., ACT OF 1861, ss. 42, 91.]—Purchaser, rights of—*Sale before registration of writ.*—A levy and sale by the sheriff is not of the less effect by reason only of its having taken place before a memorial of the writ was, under s. 91, entered on the register book. It is not the duty of the Registrar to register the sheriff's conveyance, but the sheriff's vendee must bring an action of ejectment. *Ex parte BANK OF AUSTRALASIA*, 1 S.C.R. (Q.) 126. (Full Court.)

[VICTORIA, ACT OF 1866.]—Prior purchaser—Unpaid vendor.—Purchase at a sheriff's sale of the interest of a registered proprietor, perfected by transfer, held void as against the plaintiff's interest as prior purchaser from the registered proprietor, but good as against the registered proprietor's right and interest in respect of unpaid purchase-money. *BREW v. JONES*, 2 V.R. (E.) 20; 2 A.J.R. 6.

[VICTORIA, ACT OF 1866, s. 106.]—Specifying statement—*Land of another proprietor specified.*—Where the specifying statement under s. 106 erroneously described the land of another proprietor of the same name as the judgment debtor, and the sheriff executed a transfer of the land specified to a purchaser which was duly registered: *Held*, that the title of the former registered proprietor was superseded. *HASSETT v. COLONIAL BANK*, 7 V.L.R. (L.) 380; 3 A.L.T. 38. (Full Court.)

[S.A., ACT OF 1861; AMENDING ACT OF 1878, ss. 41, 67.]—Unregistered transfer from proprietor.—The transferee under an unregistered transfer from the registered proprietor of land under the Real Property Acts is the equitable owner of the land, besides having, under s. 67 of the Amending Act (1878), a right or claim to be registered as proprietor. The sheriff under a writ of *venditioni exponas* has only power to sell the debtor's beneficial interest, and the rights of other beneficiaries antecedent to the writ of *fi. fa.* will be protected on proper proceedings being taken, at any time before the registration of the transfer from the sheriff. On January 10th, 1883, L. executed a transfer of land under the Real Property Act to B., but the transfer was not registered. On February 16th, 1883, a writ of *fi. fa.* issued on a judgment against L. was lodged with the Registrar-General and registered. The sheriff afterwards sold to T. and executed a transfer to him. *Held*, that B.'s unregistered transfer took precedence of the unregistered transfer by the sheriff, and that B. was entitled to have his transfer registered. *In re BOSQUET'S CAVEAT*, 17 S.A.L.R. 178. (Full Court.)

[N.S.W., ACT OF 1862, ss. 92, 111.]—Unregistered transfer from registered proprietor—13 Eliz. c. 5—*Exception of sale bona fide for value—Sale of equity of redemption—Notice of one month necessary*—5 Vic., No. 9, s. 31.—A. C. was the registered proprietor of certain lands under the Act, subject to a

mortgage for £1200 to the Bank of A. The mortgage had been duly registered and entered on the certificate of title. She was also indebted to the firm of D. and P., to which the defendant belonged, and also to several other persons, and was in fact insolvent. She signed an agreement for sale and afterwards executed a transfer (which was not registered) on 24th August, 1884, to the plaintiff (her son), to whom she was indebted, and who paid a portion at least of the purchase-money and paid off the mortgage to the bank. D. and P. and another creditor had obtained judgment against A. C., and writs of *fi. fa.* were issued, the first on 29th August. These writs were entered in the Real Property Office and then delivered to the sheriff, who advertised the land for sale on 8th October and sold it on 5th November to the defendant D. A. C. afterwards sequestered her estate, and the plaintiff claimed that the agreement and transfer were valid as against the defendant. *Held*, that the circumstances of the sale showed that it was intended to pass the property in the land to the plaintiff; and therefore although it was intended to defraud A. C.'s creditors, the sale was not void under 13 Eliz. c. 5, and further, that defendant, not being a creditor, could not avail himself of that defence. The interest which a sheriff can sell in land under the Real Property Act is still, as before the passing of that Act, only the beneficial interest that is in the owner at the time of the entry of the writ in the Real Property Office. One month's notice by advertisement of a sheriff's sale of an equity of redemption is necessary by virtue of 5 Vic. c. 9, s. 31 (cf. Queensland Act 31 Vic., No. 4, s. 61).

The decree was allowed to remain unexecuted for one month in order to allow the official assignee of A. C.'s estate to take proceedings to set aside the sale. *COLEMAN v. DE LISSA*, 6 N.S.W.L.R. (Eq.) 104.

[VICTORIA, ACT OF 1890, s. 139.]—*Voluntary settlement—Sale by sheriff—Rights of voluntary settlees—Prior equitable interests—13 Eliz. c. 5—Settlement to defeat creditors—Income payable to settlor until insolvency—Evidence—Bare legal estate—Restraining transfer.*—A vendor, having sold land at Ascot Vale under the Transfer of Land Act to a purchaser, partly for cash and partly by promissory notes, under a contract of sale containing the usual condition that, on default in payment of any of the promissory notes, the vendor might rescind the contract and re-sell the property, afterwards executed an indenture whereby he granted and assigned to a company certain lands—lands bought and not paid for—and, as well, the money represented by the promissory notes as the benefit of all securities for the same, the contract of sale, and all his estate, right, title and interest in the moneys and contract, together with the power for the company to sue for, recover, and give valid receipts for the purposes aforesaid, and to execute and do all such instruments and things as should be necessary or expedient upon trust for sale, and out of the proceeds to reimburse itself moneys expended in furtherance of the trust, and moneys which it was to advance for the erection of buildings on the lands, and in payment of the purchase money on the lands bought but not wholly paid for, upon trust to pay the annual income to him during

his life, or until he should become insolvent or should assign, charge, or encumber the same, or do or suffer anything whereby the same would, through his own act or default, or by operation or process of law or otherwise, become vested in or payable to some other person, with remainder over to his children. He then appointed the company his attorney under power, and, *inter alia*, gave them power to exercise and enforce all rights, powers and remedies vested in or exercisable by him in respect of any of the contracts of sale, and to enforce specific performance thereof, or to abandon, vary, or rescind the same, or to re-sell the land mentioned in any of the contracts of sale on default being made by the purchaser in payment of his promissory notes. The company accepted and entered upon the trusts of the indenture. The promissory notes of the purchaser of the Ascot Vale lands were overdue and dishonoured, when judgment was recovered against the vendor and settlor by a creditor who, on the 23rd May, 1893, issued execution on the judgment, and duly served a copy of the writ of *fi. fa.* on the Registrar of Titles under s. 139 of *The Transfer of Land Act*, 1890 together with a statement duly specifying the Ascot Vale land as the land to be affected. This copy writ and statement was duly registered in the register book. On 28th June, 1893, the sheriff sold, under the *fi. fa.*, all the right, title, and interest (if any) of the settlor in and to this land. On the same day the company lodged with the Registrar for registration a transfer bearing date the 26th June, 1893, by the settlor of all his estate and interest in and to this land. On the 5th July, 1893, the sheriff signed a transfer under s. 139 to the plaintiff of all the settlor's estate and interest in the land, and the plaintiff lodged the transfer for registration on the 7th July, 1893, and on the 21st August, 1893, commenced an action against the company, claiming that he was entitled as against the company to a transfer of all the estate and interest of the settlor to the land. *Held*, that, assuming that the legal estate remained in the settlor at the date of the sheriff's sale, and was now in the plaintiff, it was a bare legal estate, and that the whole beneficial interest in the land had passed to the company, and that the settlor had given to the company all the practical advantages which it could have if the legal estate had been conveyed to it. *Held, also*, that the limitation over in case of the settlor's insolvency did not afford sufficient proof that the deed was fraudulent, and therefore void under the Statute 13 Eliz. c. 5. *Held, further*, that the sale by the sheriff was subject to all the equitable claims to which, in the hands of the settlor, it was subject, and that as the whole beneficial interest passed from the settlor to the company, the company was entitled to call upon and compel the purchaser from the sheriff to execute in its favour a transfer of the settlor's interest, and that the Court would not, at his suit, restrain the registration of the company under its transfer. *ROWE v. EQUITY TRUSTEES AND AGENCY COMPANY LIMITED*, 21 V.L.R. 762. (Full Court.)

C. DUTIES OF REGISTRAR.

[VICTORIA, ACT OF 1866.]—*Duty of Registrar—Issue of title to purchaser—Non-compliance with statutory conditions of sale.*—As to the

power of the Registrar to refuse to issue a certificate of title to a sheriff's purchaser on the ground of non-compliance with the statutory formalities necessary in connection with the sheriff's sale: *See ex parte Ross*, 2 V.R. (L.) 10; 2 A.J.R. 19. (Full Court.)

[VICTORIA, ACT OF 1866, s. 106.]-**Duty of Registrar—Transfer conflicting with terms of instrument of title under which land sold is held.**—Under s. 106 of the Transfer of Land Statute the Registrar must register the first sheriff's transfer lodged with him, if it be valid. If such transfer appears to conflict with a condition in the instrument of title which prohibits transfer, the Registrar must decide judicially whether such a condition is a valid one. *Ex parte Bond*, 6 V.L.R. (L.) 458; 2 A.L.T. 94. (Full Court.)

[VICTORIA, ACT OF 1866.]-**Duty of Registrar—Covenant not to assign lease.**—Notwithstanding a covenant in a lease not to assign, the sheriff can sell the lessee's interest in the lease, and the Registrar must register the sheriff's transfer. *Ex parte Ellison*, 5 V.L.R. (L.) 59. (Full Court.)

[Q., ACT OF 1861, ss. 33, 34, 43, 48, 139; ACT OF 1877, ss. 14, 15, 35.]-**Duty of Registrar—Registration of execution creditor—Priority.**—On 27th August, 1886, N., being the registered proprietor of certain land under the Real Property Acts, executed a transfer of the land to M., and on the 6th September, 1886, the Crown grant and transfer were lodged for registration. On the 2nd September, 1886, two writs of execution against N. had been lodged in the registry, and on the 7th September, 1886, the Registrar entered them on the deed of grant and in the register book, against the land. *Held*, that the Registrar has no authority to determine questions of priority between the transferee and the execution creditor, and that he was justified in refusing to register the transfer, unless the transferee endorsed on it the two writs of execution as charges upon the land. *McGlone v. Registrar of Titles*, 2 Q.L.J. 182. (Full Court.)

[Q., ACT OF 1861.]-**Duty of Registrar—Transfer, registration of—Judgment, indorsement of, on transfer.**—Where a judgment is entered on the register against certain land, it is the duty of the Registrar to refuse to register a transfer of the certificate of title for the said land, unless the judgment is indorsed on the transfer. *McGlone v. Registrar of Titles*, 2 Q.L.J. 182, followed. *Perkins v. Registrar of Titles*, 3 Q.L.J. 47. (Full Court.)

D. PRIORITIES.

[N.S.W., ACT OF 1862, ss. 92, 111.]-**Equitable mortgage—Unregistered mortgage—Caveat—Notice.**—B., the registered proprietor of two allotments of land, deposited the certificates of title with a bank to secure advances, and executed a memorandum of mortgage of one of the allotments, which mortgage was not registered. Subsequently, a writ of execution against B. was registered, and the sheriff sold to E. all B.'s right, title and interest in the allotments. At the time of the registration of the writ no encumbrances on the land appeared on the register. E. having made application to have the transfer to him from the sheriff registered, the bank lodged a caveat. E. then moved to have the

caveat removed from the file. *Held*, that all that E. obtained by his purchase from the sheriff was B.'s right, title and interest. The transfer not being from a registered proprietor, s. 111 of the Real Property Act did not apply. Application refused. *Re Elliott*, 7. N.S.W.L.R. (L.) 271. (Full Court.)

[VICTORIA, ACT OF 1866, s. 106.]-**Equitable mortgage.—Mortgage—Caveat—Priority of transferee from sheriff.**—F., the registered proprietor of land, deposited his Crown grant by way of equitable mortgage with the plaintiff. Shortly afterwards a creditor obtained judgment against F., and on 14th February duly lodged a copy of writ of *fi. fa.* against the land under s. 106. The plaintiff, ten days afterwards, obtained a mortgage under the Act from F., lodged a caveat, and served notice of his claim on the sheriff. Defendant purchased from the sheriff, and presented his transfer for registration, but the Registrar refused to register his transfer. In an action between the parties: *Held*, that defendant had obtained priority. *Patchell v. Maunsell*, 7 V.L.R. (Eq.) 6.

[VICTORIA, ACT OF 1890.]-**Equitable Mortgage—Agreement to deposit title deeds made prior to registration of *fi. fa.*—Actual deposit after registration of *fi. fa.***—Where an agreement to create a mortgage by deposit of a title deed to land was made before the registration of a *fi. fa.* against the land, but the actual deposit was made after such registration, and the sheriff sold under the *fi. fa.*: *Held*, that the sheriff's transfer took priority over the equitable mortgage. *Colonial Bank of Australasia v. Riddell*, 19 V.L.R. 280.

[VICTORIA, ACT OF 1866, s. 106.]-**Equitable mortgage.**—Under s. 106 a purchaser of land at a sheriff's sale under a writ of *fi. fa.* does not become the transferee, nor is he deemed the proprietor thereof, until such transfer is entered by the Registrar in the register book. The sale under the writ does not necessarily exclude the rights of an unregistered equitable mortgagee whose right has accrued before service of a copy of the writ of *fi. fa.* upon the Registrar. *National Bank v. Morrow*, 13 V.L.R. 2; 8 A.L.T. 145. (Full Court.)

[VICTORIA, ACT OF 1866, s. 106.]-**Mortgage of land under the Act to a building society—Absolute transfer to the society with deed of defeasance.**—*Fi. fa.*: not registered against mortgagor's interest.—**Purchaser from sheriff—Purchaser from mortgagor—Real Property Statute, 1864 (No. 213), s. 182.**—Where a registered proprietor of land transferred the land to a mortgagee, the contract between them providing that the mortgagee should be registered as proprietor in fee free from any encumbrance, a deed of defeasance being executed by the mortgagee to secure the mortgagor's right of redemption: *Held*, that the simple delivery by a judgment creditor of a writ of *fi. fa.* to the sheriff, without either delivery of a memorandum to the Register-General under the general law (Act No. 213, s. 182), or service upon the Registrar of Titles of a copy of a writ with a specifying statement under Act No. 301, s. 106, did not bind the mortgagor's interest so as to invalidate an assignment for value by him, after such delivery

of the writ, and after advertisement by the sheriff of his intention to sell at a future date all the mortgagor's interest in the land. *Held, also*, that such assignment was good as against a purchaser from the sheriff with notice thereof, although such purchaser subsequently paid off the mortgage and obtained a transfer to himself in fee, and that the assignee was entitled to restrain the registration of the transfer by the mortgagee on condition of his repaying to the purchaser the mortgage debt, with interest and costs subsequent to the hearing. *Quere*, whether the interest of the mortgagor was such as could be registered under the Act No. 301, and whether it was necessary to deliver a memorandum of the writ of *fi. fa.* to the Registrar-General under Act No. 213, s. 182, or to serve on the Registrar of Titles a copy of the writ as required by s. 106 of Act No. 301. *SANDER v. TWIGG*, 13 V.L.R. 765; 9 A.L.T. 101. (Full Court.) *See also* *WATSON v. ROYAL PERMANENT BUILDING SOCIETY*, 14 V.L.R. 293, *supra*, *sub* MORTGAGE.

[VICTORIA, ACT of 1866.]—Prior purchaser—Unpaid vendor.—Purchase at a sheriff's sale of the interest of a registered proprietor, perfected by transfer, held void as against the plaintiff's interest as prior purchaser from the registered proprietor, but good as against the registered proprietor's right and interest in respect of unpaid purchase-money. *BREW v. JONES*, 2 V.R. (E.) 20; 2 A.J.R. 6.

[N.S.W., ACT of 1862, ss. 33, 34, 47; ACT of 1873, s. 1.]—Transfer—Certificate of title.—On 4th March, 1869, G. conditionally purchased the land in question; on 11th March, 1872, G. transferred to defendant by notification to the land agent of the district. On the 6th September, 1872, a Crown grant was issued to G., and in 1880 the sheriff sold under a *fi. fa.* all G.'s right, title and interest to P., and subsequently, in the same year, P. obtained a certificate of title. In 1881 P. sold to W., to whom a fresh certificate of title was issued. Later in the same year W. sold to the plaintiff, by memorandum of transfer endorsed on W.'s certificate. No fresh certificate of title was issued to the plaintiff. *Held*, that the plaintiff was entitled to maintain an action of ejectment against the defendant. Sec. 33 of the Act of 1862 applies to cases where a grant from the Crown has been issued subsequently to the passing of the Act, and makes a certificate of title conclusive evidence of the things stated in it. The plaintiff, by virtue of s. 1 of the Act of 1873, has the same rights as if a fresh certificate of title had been issued to him. And the endorsement of the memorandum of transfer on the certificate to W. is, by virtue of s. 34 of the Real Property Act, evidence of the registration of the transfer from W. to the plaintiff. *Semble*, that by s. 47 of the Real Property Act all the rights of W. were, by the execution of the memorandum of transfer, conferred on the plaintiff. *PHILLIPS v. McLAHLAN*, 5 N.S.W. L.R. 168. (Full Court.)

[S.A., ACT of 1861; AMENDING ACT of 1878, ss. 41, 67.]—Unregistered transfer from proprietor.—The transferee under an unregistered transfer from the registered proprietor of land under the Real Property Acts is the equitable owner of the land, besides having, under s. 67 of the Amending Act (1871), a right or claim to be registered as proprietor. The sheriff under

a writ of *venditioni exponas* has only power to sell the debtor's beneficial interest, and the rights of other beneficiaries antecedent to the writ of *fi. fa.* will be protected on proper proceedings being taken, at any time before the registration of the transfer from the sheriff. On January 10th, 1883, L. executed a transfer of land under the Real Property Act to B., but the transfer was not registered. On February 16, 1883, a writ of *fi. fa.* issued on a judgment against L. was lodged with the Registrar-General and registered. The sheriff afterwards sold to T. and executed a transfer to him. *Held*, that B.'s unregistered transfer took precedence of the unregistered transfer by the sheriff, and that B. was entitled to have his transfer registered. *In re BOSQUET'S CAVEAT*, 17 S.A.L.R. 173. (Full Court.)

[VICTORIA, ACT of 1890, ss. 139, 209.]—Lodgment of copy writ of *fi. fa.* with Registrar of Titles—Charge on the land—Registration of bona fide transfer within three months after lodging copy writ of *fi. fa.*—Under s. 139 of *The Transfer of Land Act*, 1890, the service of a copy writ of *fi. fa.* binds the land specified in such writ for three months from the date of such service, unless in the meantime the property specified is sold under the writ. A transfer of property from the judgment debtor, made before the service of the copy writ of *fi. fa.* but not presented for registration prior to such service, cannot be registered during the period of three months from the date of such service of the copy writ. *In re SHEARS AND ADLER*, 17 V.L.R. 316. (Full Court.)

[VICTORIA, ACT of 1866, s. 106.]—Late lodgment for registration of transfer from sheriff.—“My impression of s. 106 is that it does not annul a sale (of land under the Act) by *fi. fa.* as against the execution debtor, but leaves the purchaser exposed to be defeated by his acts until the execution is by some means brought into registration.” *Per* Molesworth J. *UNITED HAND-IN-HAND, &c., Co. v. NATIONAL BANK*, 2 V.L.R. (Eq.) 206, 219.

[VICTORIA, ACT of 1866, s. 106.]—Late lodgment for registration of transfer from sheriff—Effect of not conforming to s. 106—Official assignee of execution debtor.—A writ of *fi. fa.* was duly served on the Registrar in accordance with s. 106, but the transfer from the sheriff was not lodged for registration within the time limited (three months). In the meantime the debtor had become insolvent, and his official assignee claimed to set aside the transfer on the above ground. *Held*, that he was not entitled to do so, as he was in no better position as against the transferee than the debtor himself would have been if he were not insolvent. *GILES v. LESSER*, 5 V.L.R. (Eq.) 38.

Q., ACT of 1861, s. 91.]—Late lodgment for registration of transfer from sheriff.—The words “executed and put in force within three calendar months from the date of entering such writ,” in s. 91, signify only the sale of the land by the sheriff within the time specified, and do not require that a transfer of the land by the sheriff should be produced for registration within that time, but priority may be lost otherwise. Land sold by the sheriff under a *fi. fa.* within three months from the

date of entry of the said writ on the register is not bound by the writ as against a purchaser from the registered proprietor who has lodged his memorandum of transfer before the purchaser from the sheriff. *Re REAL PROPERTY ACTS, 4 Q.L.J. 70.* (Full Court.)

[Q., ACT OF 1861, s. 91; ACT OF 1877, ss. 14, 15.]—Late lodgment for registration of transfer from sheriff—*Registration dates back to lodgment*—*Transfer from registered proprietor*.—On 7th June, 1898, a writ of *fi. fa.* issued on a judgment against D. was produced at the Real Property Office for registration against his lands, and was entered in the register book on 23rd June. On 11th September a duly executed transfer by D. to G. was produced for registration, and on 15th September a transfer from the sheriff to W. was produced for registration. *Held*, that the date of production of the writ must be deemed to be its date of registration, and that, as the three months within which the writ bound the land had expired before the production of either of the transfers, the ordinary rule as to priorities between the instruments would apply, and that the transfer to G., being first in date of production, was entitled to priority over the transfer from the sheriff. *In re DEANE, 9 Q.L.J. 106.* (Full Court.)

[VICTORIA, ACT OF 1866, s. 106.]—Land sold under two writs—*Priority*.—Special case stated for opinion of Full Court. Defendant was sheriff, and plaintiffs had caused a writ of *fi. fa.* to be issued against the goods of one Bean, and delivered to him on 30th September, 1880. A certain sum was paid on the writ, leaving a balance of £44 due. In June, 1882, Mrs. Warburton issued execution against Bean for £220, and notice of the issue of the writ was given to the Registrar of Titles in compliance with s. 106 of the Transfer of Land Statute, so as to bind lands belonging to Bean. This writ was also given to the sheriff, and on the 6th July he sold, under both writs, certain freehold and leasehold property of the judgment debtor. The freehold realised about £70 and the leasehold £2. The plaintiffs afterwards served on the Registrar a notice of the issue of their writ. It was contended for the plaintiffs that s. 106 had nothing to do with the duties of the sheriff, but was only a matter of conveyancing, and that the law still remained in force that the sheriff must pay creditors according to the times of the delivery of the writs to him. Judgment for plaintiffs. *BEATH v. ANDERSON, 4 A.L.T. 151.* (Full Court.)

[Q., ACT OF 1861, s. 91.]—Land sold under two writs—*Priority of registration on land*.—H. M. & Co. first, and plaintiff on a later date, delivered to the sheriff writs of *fi. fa.* against W. and D. Plaintiff, after delivery, registered his *fi. fa.* in the Real Property Office against W. & D.'s lands. H. M. & Co. registered their writ on the land some days later than plaintiff. The sheriff then sold and conveyed under both writs, with notice from plaintiff that his *fi. fa.* had been registered first, and of his claim to priority thereby. Instead of satisfying plaintiff's claim, the sheriff paid the proceeds of the sale over to H. M. & Co., whose *fi. fa.* was first delivered to him. *Held*, that the plaintiff was entitled to the proceeds of the sale, as his writ had priority over H. M. & Co.'s in respect of the land. *PEACE v. SHERIFF OF QUEENSLAND, 4 Q.L.J. 83.* (Full Court.)

[VICTORIA, ACT OF 1890, ss. 17, 51, 139.]—Lodgment of writ for registration against leasehold—Subsequent lodgment of lease—Later lodgment of mortgage.—A copy *fi. fa.* and statement specifying the land, lease, mortgage, or charge sought to be affected thereby, presented for registration under s. 139 of *The Transfer of Land Act, 1890*, cannot be registered by the Titles Office unless the estate or interest of the judgment debtor against which it is sought to be registered appears upon the register book at the time the copy *fi. fa.* is lodged. It was not intended by that section that such copy *fi. fa.* and statement should be retained in the office until such estate or interest should appear in the register book. Prior to April, 1890, C. was the licensee from the Crown of certain land, and in that month a judgment was obtained against him by R., and a writ of *fi. fa.* was issued thereon on the 18th August, 1890. On the 22nd August, 1890, C. applied for a lease from the Crown of the land of which he was the licensee. The application was subsequently approved, and on the 28th October, 1890, the lease was executed by the Governor-in-Council, and on the 2nd December, 1890, by C. The lease was for fourteen years, from the 1st March, 1890, and was dated as of that date. On the 11th March, 1890, C. had executed a memorandum of mortgage over the land purporting to be under the provisions of the Transfer of Land Statute (No. 301) in favour of D. On the 11th December, 1890, at 11.37 a.m., a copy of the writ of *fi. fa.*, together with a statement specifying the land sought to be affected, was lodged in the Office of Titles for registration, and remained there during that day. On the same day, at 12.30 p.m., the lease was lodged for registration and entered in the register book. On the same day, at 1.47 p.m., the mortgage was lodged for registration. *Held*, that the mortgage was entitled to be first registered, inasmuch as it was the first document lodged for registration after the entry of the lease in the register book. *RICHARDS v. CADMAN, 17 V.L.R. 203.*

[VICTORIA, ACT OF 1866, s. 106.]—Registration of purchaser from judgment debtor—*Alias writ of fi. fa.*—On 2nd January, 1872, B.'s transferor presented for registration under the Transfer of Land Statute transfers of certain lands, and on the 21st of the same month B. obtained registration of the transfers and the usual certificate of title. More than three months previously, viz.:—On 20th October, 1871, a copy of a writ of *fi. facias* (which had been issued by the Supreme Court in an action against the said transferor) was served on the appellant Registrar under s. 106 of the statute, specifying the said lands as "the lands sought to be affected thereby," and was by the appellant duly entered. On 5th January, 1872, a copy of an *alias fieri facias* in the same action, with a statement specifying the same lands as the lands sought to be affected by such writ, was also served on the appellant. On 2nd and 28th March, 1872, transfers of the same lands from the District Sheriff to the respondent, under the *alias* writ, were lodged for registration with the appellant, who refused to register them or to issue certificates of title: *Held*, on petition by the respondent, under s. 135 of the said statute, that the appellant was right in such refusal. B. had previously to 5th January, 1872, acquired a

title to the lands which could only be defeated by a sheriff's transfer of them in pursuance of the original writ; and as the respondent's transfers were in pursuance of the *alias* writ, and were made at the time when, according to the statute, no valid transfer could have been made in execution of the original writ, the appellant was right in completing B.'s title by registration on 21st January.

The policy of the Legislature in framing s. 106, of the Act of 1866 was evidently to prevent titles from being affected beyond a limited time by the operation of unexecuted writs of execution as charges on the land, and to reconcile the rights of judgment creditors with those of a purchaser for value, whether with or without notice. There is nothing in the statute, or in this particular section of it, to prevent a judgment debtor from making a contract for the transfer of his land to a purchaser for value subject to the rights which the section gives to an execution creditor, or to a possible purchaser through the sheriff. Such a contract can only be perfected through registration, and must, therefore, remain defeasible till the writ is withdrawn or satisfied, or the term of three months from the day on which the copy was served has expired. *REGISTRAR OF TITLES v. PATERSON*, 2 App. Cas. 110, 118.

[Q., ACT OF 1861, s. 91.]—*Duty of Registrar-General—Conveyance by sheriff.*—It is not the duty of the Registrar-General to register the sheriff's conveyance, but the sheriff's vendee must bring his ejectment. *Ex parte BANK OF AUSTRALASIA*, 1 S.C.R. (Q.) 126. (Full Court.)

[Q., ACTS OF 1861 AND 1877.]—*Injunction against Registrar of Titles—Transfer under fi. fa.*—An injunction will not lie to restrain the Registrar of Titles from registering a transfer under a *fi. fa.* The appropriate remedy by a person aggrieved by such a transfer is an injunction against the proposed transferee. *Ex parte HUNTER*, B.C.R., 18th Feb., 1892.

E. PROCEDURE.

[S.A., ACT OF 1861; A. ACT OF 1878, ss. 41, 42.]—*Summons—Fieri Facias—Unregistered transfer—Caveat.*—On 13th June, 1879, a writ of *fi. fa.*, with the necessary statement, was lodged with the Registrar-General, and an entry thereof made on the register, pursuant to s. 41 of A. Act (1878.) On 25th June, after sale advertised by the sheriff, a caveat was entered by W., claiming under an unregistered transfer dated March, 1878, and a simultaneous deposit of the certificate of title. On summons under s. 42 of A. Act (1878) the Court refused to order removal of the caveat, declining to decide the questions involved until the caveator had had an opportunity of bringing the matter in some more formal manner. Question of rights of an unregistered transferee, and of the rights conferred by a deposit of a certificate of title, discussed. *Re WADHAM'S CAVEAT*, 13 S.A.L.R. 70. (Full Court.)

[Q., ACT OF 1861, s. 33.]—*Vesting order—Non-production of certificate of title.*—When the vendee of land from the sheriff under the Real Property Act cannot produce the certificate of title, a vesting order will be refused. *CHAMBERS v. BONAR*, 1 S.C.R. (Q.) 160.

SCHEDULE OF TRUSTS.

Not an "instrument" under the Act
See TRUSTS AND EQUITIES.

SCIRE FACIAS.

To set aside Crown grant improperly obtained
See CROWN GRANT.

SEARCH.

Duty of searcher—Inquiry as to documents lodged but not registered

See REMEDIES FOR DEPRIVATION—*Assurance Fund.*
In re JACKSON, 10 N.Z.L.R. 148.

Duties as to—Omission to make search—Contributory negligence

See REMEDIES FOR DEPRIVATION—*Assurance Fund.*

SECOND MORTGAGE.

See CAVEAT AGAINST DEALINGS.
See MORTGAGE.

SECURITY.

Where caveat removed
See CAVEAT AGAINST DEALINGS.
For costs
See COSTS.

SERVICE.

Of notice of rule nisi to remove caveat
See BRINGING LAND UNDER ACT.
In re SLACK, 1 V.L.R. (L.) 319.

Of notice of application for order to restrain Registrar from bringing land under Act.

It is sufficient to serve this notice on the Registrar. Service on the applicant is not necessary. *Ex parte BEISSEL*, 5 V.L.R. (L.) 53, 57.

SETTLEMENT.

Post-nuptial
See BANKRUPTCY.
To defeat creditors
See SALE BY SHERIFF.

SHERIFF.

See SALE BY SHERIFF.

"SOLE USE AND BENEFIT."

See TRUSTS AND EQUITIES.
WALTERS v. ELDRIDGE, 4 Q.L.J. 118.

SOLICITOR.

*Negligence by*See BRINGING LAND UNDER ACT—
(C) (d).*In re JONES*, 2 W.N. (N.S.W.) 74, 84.*Having lien on deeds cannot be compelled to produce them under s. 25 of the Victorian Act of 1866.**In re CRAIG*, 5 A.L.T. 54.

SPECIAL CASE.

See PRACTICE.

See REGISTRAR, DUTIES OF

SPECIFIC PERFORMANCE.

See TRUSTS AND EQUITIES—(C.)
Priorities.

See VENDOR AND PURCHASER.

Of agreement for lease

See LEASE.

Caveat on land sought to be conveyed

See CAVEAT AGAINST DEALINGS.

STAMP ACT.

Duty, on transfer

See TRANSFER

Duty, on nomination of trustees

See TRUSTS AND EQUITIES.

*A transaction which is in effect a mortgage will not be treated as a transfer for the purpose of stamp duty.**Ex parte BALLARAT L.M. AND A. CO., LTD.*, 17 A.L.T. 43.*Stamp duty payable as on conveyance where land brought under Act in name of purchaser.**Ex parte CLISSOLD*, 5 N.S.W.L.R. (C.L.) 176.

STATUTE OF LIMITATIONS.

See ADVERSE POSSESSION.

See BOUNDARIES.

See BRINGING LAND UNDER ACT.

See CERTIFICATE OF TITLE—(A.) (1)

Powers of Registrar

See CROWN GRANT.

See REMEDIES FOR DEPRIVATION.

A person barred by statute cannot prevent applicant from bringing land under Act

See BRINGING LAND UNDER ACT.

BELL v. BECKMANN, 10 N.S.W.L.R. (Eq.) 251.[VICTORIA, ACT OF 1866, s. 24.]—*Information—Escheat—Statute of Limitations* (No. 213) Part II. — *Injunction—Jurisdiction.*—There is jurisdiction in Equity to entertain an information filed by the Attorney-General for a declaration of the title of the Crown to an escheat, and for an injunction against any dealing with the land by the Registrar of Titles; although the injunction shows a legal title in the Crown and alleges no special ground of equitable jurisdiction. *The Statute of Limitations* (No. 213), Part II., does not affect the Crown. *ATTORNEY-GENERAL v. HOGGAN*, 3 V.L.R. (Eq.) 111.

SUCCESSION.

To wife's realty

See HUSBAND AND WIFE.

SUMMONS.

To compel Registrar to act

See REGISTRAR, DUTIES OF.

SUPREME COURT.

Jurisdiction

See PRACTICE.

*Powers of—Calling in certificate of title*See CERTIFICATE OF TITLE—(A)
Cancellation.

SURVEY.

See BOUNDARIES.

TAIL.

See also ESTATE TAIL.

[Q., ACT OF 1861, ss. 1, 16, 26, 36, 37, 38, 43, 48, 112; ACT OF 1877, s. 51.]—*Estate tail—Disentailing deed.—Deeds Registration Act* (7 Vic., No. 16), s. 16—*Titles to Land Act*, 1858, s. 20—*Statute De Donis Conditionalibus* (1 Ed. I. c. 1)—*The Fines and Recoveries Act* (3 and 4 Wm. IV., c. 74)—*Settled Land Act* of 1886 (50 Vic., No. 13), s. 31 (5)—*Power to bar entail—Lands under Real Property Act—Lands not under Act—Special case—O. XXXIV., rr. 1 and 4.*—By a marriage settlement made in 1857, two pieces of land, herein called the Edward Street land and the Elizabeth Street land respectively, were conveyed to a trustee for the following uses:—To the use of the intended wife, the plaintiff E. A., for life, with remainder to the issue of the marriage as tenants in common in tail, with cross remainders, and with ultimate remainder in fee to the intended husband. The marriage was duly celebrated, and in 1866 the husband died intestate, leaving a son (his heir) and two daughters, who, with the widow and the husbands of the daughters, were the plaintiffs. Some years later, on the application of the trustee for uses, the Elizabeth Street land was, apparently by inadvertence of the Real Property Office, brought under the Real Property Act, and

a certificate of title was issued to a nominee of the trustee, who shortly afterwards, by a nomination of trustees, transferred the land to the defendants upon the trusts of the settlement of 1857. In 1896, the defendants were, by order of Court, appointed trustees of the Edward Street land under *The Settled Lands Act* of 1886, and subsequently the tenant for life sold the land for £3000, which amount remained in the hands of the defendants. In 1898, a deed, to which all the plaintiffs and the defendants were parties, was executed, which purported to convey the Elizabeth Street land, and the £3000 representing the Edward Street land, to the defendants upon trust to hold the same subject to the life estate (except with respect to the £3000, in which the plaintiff E. A. gave up her life estate) of the plaintiff E. A., but discharged from the estates tail of the issue of the marriage, and all estates to take effect after the determination of such estates, and to hold them so discharged to the use of the three children of the marriage as tenants in common in fee. The plaintiff E. A. concurred in the deed as "Protector of the Settlement," which was executed and acknowledged as prescribed by s. 16 of *The Deeds Registration Act*, 1843. In an action to determine the rights of the parties under the deed: *Held*, that the registered proprietor of an estate tail under the Real Property Acts can dispose of it by an instrument duly registered, and that the deed was consequently a valid disposition of the equitable estates tail in the land held under the Real Property Acts, and also of the legal interests in the £3000 which represented the land not under the Real Property Acts. The English *Fines and Recoveries Act* (3 and 4 Wm. IV. c. 74) is not in force in Queensland, and therefore the concurrence of the plaintiff E. A. as "Protector of the Settlement" gave no additional validity to the deed. *ALLISON v. PETTY*, 9 Q.L.J. 125. (Full Court.)

[N.B.—The above case is inserted here because it was not reported when col. 95 was going through the press.]

TENANCY AT WILL.

See CERTIFICATE OF TITLE—(B.)
Conclusive effect

Expiration of—*Statute of Limitations*
See ADVERSE POSSESSION.

TENANT

Meaning of term
See INTERPRETATION—Words.

Distress on goods of
See MORTGAGE.

Rights of, preserved
See CERTIFICATE OF TITLE—(B.)
Conclusive effect.

TENANT FOR LIFE.

Right of trustee to bring land under
Act in name of
See BRINGING LAND UNDER ACT—
(B.) Capacity.

"TENANT OR OCCUPIER."

See INTERPRETATION—Words.

TIME.

For lodging caveat against application
cannot be extended

See BRINGING LAND UNDER ACT
In re BROUGHTON, 6 W.N. (N.S.W.) 43.

TITLE.

See CERTIFICATE OF TITLE.
See CROWN GRANT.
See INSTRUMENTS AND DOCUMENTS
OF TITLE.

TRANSFER IN BLANK.

See REMEDIES FOR DEPRIVATION.
See TRANSFER—(B.) Form and Preparation.

TRANSFER.

To foreign company
See REGISTRAR, DUTIES OF.

To married woman—Effect of consent
of husband

See HUSBAND AND WIFE

By married woman—Consent of
husband

See HUSBAND AND WIFE.

Of land subject to mortgage—Liability
of transferee

See MORTGAGE—Transfer of mort-
gaged land.

Of selection by infant

See TRUSTS AND EQUITIES.

HALL v. LODER, 7 N.S.W.L.R. (Eq.) 44.

[N.S.W.]—Voluntary transfer—*Bankruptcy*.
—In the case of a voluntary transfer the Registrar is not entitled to make a notification on the certificate of title that the transfer was made subject to the provisions of s. 55 of the Bankruptcy Act. *Ex parte CAMERON*, 15 N.S.W. L.R. (L.) 139.

TRANSFER.

- A. EXCHANGE.
- B. FORM AND PREPARATION.
- C. MERGER.
- D. NATURE AND EFFECT.
- E. REGISTRATION.
- F. PRIORITIES.
- G. STAMP DUTIES.

A. EXCHANGE.

[VICTORIA, ACT OF 1866.]—Exchange—*Marriage settlement*—Power to exchange settled land for other yielding "equal rental"—Exchange for lands of ample value but yielding no rental—

Refusal of Registrar to register conveyance sustained—Trusts.—C. on his marriage made a settlement of lands under the Act on trustees for his wife and children, and the settlement contained a clause empowering the trustees to make an exchange of the land settled for other lands. It was desired to exchange the land in a manner not in accordance with the terms of the settlement. The settlor and his wife consented to the exchange. *Held*, that such consent could not bind the children, who were not of age and not before the Court, and that the Court would not exercise its discretion so as to compel the Registrar to register the land proposed to be exchanged in the name of the proposed transferees, and thus give an indefeasible title, which might at a future time stand in the way of the children if they wished to object to the exchange. *Ex parte DOUGHARTY*, 4 A.J.R. 71. (Full Court.)

B. FORM AND PREPARATION.

[VICTORIA.]—Contempt of Court—*Unauthorized person preparing transfer*—11 Vic., No. 33, s. 13.—A person preparing a transfer of land for reward without proper authorisation to do so is guilty of a contempt of court under s. 13 of the Act 11 Vic., No. 13. *In re STRONG, Ex parte CAMPBELL*, 4 A.J.R. 150. (Full Court.)

[Q., ACTS OF 1861 AND 1877.]—Transfer in blank.—A transfer in blank is a most improper proceeding. *HALCROW v. FLETCHER*, B.C.R., 1st June, 1886; *BISHOP v. DONKIN*, 7th June, 1887; *COX v. BOURNE*, 8 Q.L.J. 66. *Semble*, a memorandum of transfer in blank is absolutely void. *GILBERT v. BOURNE*, 6 Q.L.J. 270.

[S.A., ACT OF 1861.]—Agreement for sale—*Payment of purchase-money*.—No instrument or agreement in respect of land under *The Real Property Act* of 1861 is of any validity or enforceable either at law or in equity unless the dealing or transaction be one contemplated by the Act, and such instrument or agreement be in the form provided by the Act. The Real Property Act contemplates no executory agreements, and no instruments that cannot be immediately registered. *LANGE v. RUWOLDT*, 6 S.A.L.R. 75; S.C. 7 S.A.L.R. 1.

C. MERGER.

[N.Z. ACT.]—*Merger—Lease—Fee-simple—Mortgage—Registration—Equitable title.*—C. became the owner of a freehold property, the title to which was under the provisions of *The Land Transfer Act*, and executed three mortgages over the fee-simple. He was also, previously to the purchase, the assignee of a leasehold interest in the same land, over which interest a mortgage also existed. The third mortgagee, under his power of sale, sold the fee-simple to S. and executed a transfer to him, which was not registered for some days. In the meantime S. paid off the mortgage over the lease and registered the discharge. The day after this registration, and before the transfer of the fee-simple to S. was registered, C. signed an agreement to assign the lease to B., who entered a caveat to protect his rights. *Held*, (1) That B. had no title of any kind which he could set up as against S.; (2) That although at the date of B.'s agreement S. had no complete title, he had a complete equitable title against B.; (3) That the lease abso-

lutely merged in the fee when the discharge of the mortgage was registered. *Quære*, whether the lease did not merge on the purchase by C. of the fee, subject to the rights of the mortgagee of the lease. *SMITH v. DAVY* (Registrar) AND *BULLER*, N.Z.L.R. 2 S.C. 398.

D. NATURE AND EFFECT.

[VICTORIA, ACT OF 1866.]—"Transfer"—*Meaning of the term.*—A transfer under the Act means something more than the signing and delivery to the proposed transferee of a form of transfer. It includes applying for and effecting the completion of the transfer by registration. *VALE v. BLAIR*, 9 A.L.T. 90.

[S.A., ACT OF 1861.]—*Memorandum of transfer—Deed—Estoppel—Vendor's lien.*—A memorandum of transfer under *The Real Property Act* of 1861, in the form in the schedule, does not, when registered, operate as an estoppel so as to prevent vendor from showing non-payment of purchase-money. *Semble*, a vendor under the Act has a lien for unpaid purchase-money against the purchaser, although transfer registered. *KELLY v. FULLER*, 1 S.A.L.R. 15. *Sed vide SINCLAIR v. GUMPERTZ*, 15 W.N. (N.S.W.) 125, *infra*.

[N.S.W., ACT OF 1862, s. 35.]—*Memorandum of transfer—Deed.*—*Quære*, whether a memorandum of transfer registered under the Real Property Act has not for all purposes the effect of a deed duly executed, so as to operate as an estoppel as to the payment of the specified consideration. (*KELLY v. FULLER*, 1 S.A.L.R. 15, *supra*, questioned.) *SINCLAIR v. GUMPERTZ*, 15 W.N. (N.S.W.) 125. (Full Court.)

[VICTORIA, ACT OF 1866.]—*Non-delivery of abstract of title—Land under Act.*—Upon a contract for the sale of land under *The Transfer of Land Statute* a transfer under the Act is all that the purchaser is entitled to. He cannot insist upon delivery of an abstract of title and copies of deeds and documents relating to the land in vendor's possession. *DAVIDSON v. BROWN*, 5 V.L.R. (L.) 221; 1 A.L.T. 43.

[VICTORIA, ACT OF 1890, ss. 52, 89, 6TH SCHEDULE; INSOLVENCY ACT OF 1890, s. 72.]—*Settlement—Voluntary settlement—True consideration—Consideration other than that expressed in the deed—Estoppel.*—The insolvent and A. had purchased land under the operation of *The Transfer of Land Act*, 1870, with money found entirely by the insolvent's wife, A. giving the insolvent a mortgage over the land for his half of the purchase-money. When the insolvent's total indebtedness to his wife was £383, the value of the land being then £256, it was agreed between the insolvent, his wife, and A. that in consideration of the wife taking a promissory-note for £127 and obtaining a transfer of the land from the insolvent and A., she should release the insolvent of his indebtedness to her. The transfer was expressed to be in consideration of £256 paid by the wife to the insolvent and A. No money at all changed hands. The insolvent had, immediately before the transfer, discharged A. from his mortgage over the land. In an action by the trustee of the insolvent's estate to set aside the transfer as voluntary: *Held*, that the consideration stated in the transfer was not inconsistent with the true

consideration for the transaction, and that the wife was not estopped from relying on the real facts. *FLANAGAN v. BLADEN*, 17 A.L.T. 69; 1 A.L.R. 62.

[VICTORIA, ACT OF 1866, s. 50.]—Trust—Constructive notice of—*Voluntary transfer*.—S. 50 of *The Transfer of Land Statute* does not apply to a voluntary transfer of land so as to relieve a voluntary transferee from the registered proprietor of liability to beneficiaries for whom he is trustee. *CROW v. CAMPBELL*, 10 V.L.R. (Eq.) 186.

E. REGISTRATION.

[N.Z., ACT OF 1885, ss. 38, 114, 175.]—Duty of transferee to register.—It is the business of the purchaser of land under the Land Transfer Act to take his transfer to the Registry Office, and to procure himself to be registered. *COMMON v. REES*, 9 N.Z.L.R. 555 (C.A.)

[Q., ACT OF 1861, s. 91.]—Judgment, indorsement of on transfer.—Where a judgment is entered on the register against certain land, it is the duty of the Registrar to refuse to register a transfer of the certificate of title for the said land, unless the judgment is indorsed on the transfer. *M'GLONE v. REGISTRAR OF TITLES*, 2 Q.L.J. 182; *PERKINS v. REGISTRAR OF TITLES*, 3 Q.L.J. 47 (Full Court.)

[Q., ACT OF 1861, s. 86.]—Void transfer—*Cancellation of certificate of title*.—Where a transfer was declared void as against a trustee in insolvency, an order was made to cancel the certificate of title in the register book, enter the vesting order, and issue new certificates of title. *In re WILDASH v. HUTCHISON, Ex parte MISKIN*, 1 Q.L.R. (Pt. II.) 47.

F. PRIORITIES.

[VICTORIA, ACT OF 1866.]—Death of transferor.—A transfer executed by the transferor, but not registered before his death, is nevertheless valid, and passes the estate in the land to the transferee upon registration. *TIERNY v. HALFPENNY*, 9 V.L.R. (Eq.) 152, 157.

[Q., ACT OF 1861, ss. 43, 48, 99; ACT OF 1877, ss. 12, 32, 48, 49.]—Death of transferor—*Caveat—Will—Priority of gift*.—S., being the registered proprietor of lands under the Real Property Act, devised the said lands to trustees upon certain trusts. Some time afterwards he executed a memorandum of transfer without consideration in favour of his son in the form required by the Act. That document remained in a drawer in testator's house, and was not registered. The will was not revoked, and on the day of his death, and after his death, the transfer was lodged in the Real Property Office. Before the transfer was registered, the trustees lodged a caveat forbidding the registration of the transfer. *Held*, that the will, being unrevoked, spoke from the death of the testator, and the gift not being registered was incomplete, and the trustees were held to be entitled to registration in priority to the son. *In re SKINNER*, 6 Q.L.J. 68.

[VICTORIA, ACT OF 1866, ss. 58, 42.]—Unregistered transfer to volunteer—*Deposit of certificate of title and transfer—Rights of depositor*.—The registered proprietor of land executed in favour of A., for a nominal consideration, a transfer, which was not registered. A. deposited the certificate of title and transfer with a bank as

security for an overdraft, the bank having no notice of a claim to the land by any person other than A. *Held*, that the bank only acquired such rights as A. had against the registered proprietor, and was not entitled as against him to hold the land as a security. (*Semble*) *Secus*, if the transfer had been registered. *PLUMPTON v. PLUMPTON*, 11 V.L.R. 733.

G. STAMP DUTIES.

[Q., ACT OF 1861, ss. 77, 82.]—Nomination of trustees—*Transferors and transferees identical—Stamp Duties Act of 1866, s. 27*.—A document in the form of a nomination of trustees from A. and B. to A. and B. as trustees under *The Real Property Act*, 1861, for Shaw and Co., Limited, was tendered to the Stamp Commissioners to fix the duty payable. The transferors and transferees were identical. The Commissioners considered it a conveyance, and demanded duty accordingly, while the trustees claimed that it was liable to nominal duty only as an agreement. *Held*, that the instrument was in law invalid as a transfer, and did not require stamp duty, but that it could not be registered as a transfer without payment of stamp duty. *In re WHITE AND SHAW*, 6 Q.L.J. 55. (Full Court.)

[VICTORIA, ACT OF 1890, s. 63.]—Assignment of contract of sale—*Stamps Act, 1860, s. 93*.—An assignment of a contract of sale of land which is under the operation of *The Transfer of Land Act*, 1890, is not an instrument "whereby any property upon the sale thereof is legally or equitably transferred to or vested in the purchaser," within the meaning of s. 93 of *The Stamps Act*, 1890, and is therefore not liable to stamp duty as such. *JOHNSON v. MCKELL*, 14 A.L.T. 177.

[VICTORIA, ACT OF 1890.]—Sale—*Transfer by way of mortgage, with deed of defeasance, in consideration of money lent—Stamps Act, 1890 (No. 1140), ss. 70, 71, 93, 97—Stamps Act, 1892 (No. 1274), s. 13*.—A transfer of real property, though absolute in form, when accompanied by a deed of defeasance, and in reality given by way of security for the repayment of money lent, is not a "conveyance or transfer on sale," and is not chargeable as such with duty under the Acts abovementioned. *In re MULLER, Ex parte BALLARAT LAND, & CO. LTD.*, 1 A.L.R. 84. (Full Court.) (*A firming decision of Hood J.*, 17 A.L.T. 43; 1 A.L.R. 58.)

TRANSMISSION.

See BANKRUPTCY.

See HUSBAND AND WIFE.

See INFANT.

Revocation of probate

See REMEDIES FOR DEPRIVATION (D.)
QUEENSLAND TRUSTEES LIMITED v. REGISTRAR OF TITLES, 5 Q.L.J. 46.

Devise of trust estates—Registration of devise

See TRUSTS AND EQUITIES—*Recognition of trusts*.

Order-in-Council appointing trustees of Maori infant must be registered as a transmission.

See INFANT.

TRANSMISSION BY DEATH.

[N.Z., Act of 1885, s. 177.]—*Assurance Fund—Fees payable to.*—Under s. 177 of the Act of 1885 the value of the estate or interest on which assurance charges were leviable was the value of such estate or interest free from encumbrances. *In re THE WILL OF LORT*, 6 N.Z.L.R. 555. (But see now s. 11 of the Amendment Act of 1889.) (Full Court.)

[Q., Act of 1861.]—*Evidence of Death.*—On an application for an order nisi calling on the Registrar to register petitioner as owner of certain lands under the Act, the petitioner was next-of-kin of G., who was lost in the bush in 1869, and, although search had been made, had never been heard of again. In 1872 letters of administration were granted to petitioner, but the Registrar had not considered there was sufficient evidence of death, and refused to register petitioner as proprietor of the lands. *Held*, that the facts disclosed reasonable presumption of death, and that the petitioner was entitled to be registered by transmission. *Ex parte GENGEL*, B.C.R., 2nd July, 1873. (Full Court.)

[S.A., Act of 1861, s. 79.]—*Evidence of death—Intestate Estates Act, 1867.*—The provisions of *The Intestate Estates Act, 1867*, making the production of letters of administration conclusive evidence that the deceased died intestate, do not dispense with the proof of the death, but the production of such letters of administration only establishes conclusively the intestacy when the intestate is in fact proved to be dead. *PANNAN v. PANNAN*, 7 S.A.L.R. 54. (Full Court.)

[Tas., Act of 1862, ss. 80, 110.]—*Interpretation—Estate charged with sum of money.*—Under a will trustees were directed to stand possessed of testator's estate upon trust to set apart a sum of money and hold it in trust for W., an infant, subject to which in trust for A. absolutely. An application by A., under s. 80, to be registered as proprietor of lands in the estate, had been refused on the grounds that the certificate could not be issued clear of the charge, which could only be cleared off the estate by the infant when of full age. *Held*, that the intention of the will was satisfied by the trustees raising and standing possessed of the money, and that in so doing the trust in favour of A. was in force without waiting for such time as the infant could give a release, and that as soon therefore as the money was raised the certificate could issue. *AIKENHEAD v. RECORDER OF TITLES*, April 30, 1890, Tas. Dig., col. 106. (Full Court.)

[N.Z., Act of 1870, ss. 21 (3), 115.]—*Interpretation—Heirs and assigns.*—By an ante-nuptial settlement, land was conveyed to trustees upon trust for the separate use of the wife during her life, then to the use of the husband and his assigns during his life, and after his death to the use of the children, in default of issue to the use of the heirs and assigns of the survivor. The

wife having died without issue of the marriage, the husband applied to the Land Transfer Office for a certificate of title as proprietor in fee simple. The application was refused, on the ground that the applicant had an estate for life only. *Held*, that the words "and assigns" following the word "heirs" in the ultimate limitation conferred no power of appointment; and that the applicant's estate in the land was a life estate. *In re KNAPMAN*, 3 N.Z.J. (1878), 111. (Full Court.)

[Q., Act of 1861.]—*Interpretation—Will—Parties.*—A testator, seized of lands in fee-simple, made his will in the following terms: "This is my last will and testament. I bequeath to my wife the whole of my worldly goods and possessions, and I appoint J. and W. my executors." Testator died leaving widow *enceinte*. A posthumous son was born and was heir-at-law. The executors proved the will. The widow applied to bring certain lands under the provisions of *The Real Property Act*. Upon her application the question was reserved for the Full Court. Does the fee-simple of the late C. S. W. pass to the widow by virtue of the will? The Court declined to give an opinion, as certain persons not bound by the probate were not represented. *In re WARRY'S WILL, Ex parte WARRY*, 1 S.C.R. (Q.) 136. (Full Court.)

[S.A., Act of 1861.]—*Intestacy—Will—Renunciation of trustees—Inheritance Act of 1867.*—The effect of the renunciation by trustees under a will on lands under the provisions of *The Real Property Act*, of which the testator died seized, is to produce an intestacy as regards such lands, which are therefore removed from the provisions of *The Real Property Act*, and pass to the administrator by virtue of *The Inheritance Act of 1867*. The jurisdiction of deciding to whom the property is transmitted rests, in the first instance, however, in the Lands Titles Commissioners. *ADCOCK v. POOLE*, 7 S.A.L.R. 149. (Full Court.)

[S.A., Act of 1861, s. 79.]—*Intestacy—Powers of Registrar—Registered proprietor—Prior grant—Ejectment.*—In ejectment by an administrator to whom a certificate of title had been issued in pursuance of s. 79 of the Act of 1861, defendant claimed by virtue of a grant of the land made prior to the death of the registered proprietor. Verdict directed for plaintiff, with liberty to defendant to move for a nonsuit, on the ground that the Registrar-General had exceeded his power in issuing such certificate. *PANNAN v. PANNAN*, 6 S.A.L.R. 106. (Full Court.)

[S.A., Act of 1861, s. 79.]—*Intestacy—Intestate Real Estates Act of 1867.*—A certificate of title issued under s. 79 of *The Real Property Act of 1861* is not invalidated by reason that the particulars of transmission through which the applicant claims are not entered on the register. But it is sufficient if such certificate purports to be issued pursuant to the direction of the Lands Titles Commissioner, whose decision is final and without appeal. An administrator entitled to real estate of an intestate by virtue of *The Inheritance Act of 1867* is not a person authorised by s. 79 of *The Real Property Act of 1861* to apply to be registered as proprietor of the lands of an intestate, and the Real Property Commissioners have no jurisdiction to register transmission to him, but he is entitled to maintain ejectment by

virtue of his letters of administration, irrespective of *The Real Property Act*, and his title of possession dates back to the death of the intestate the moment such letters are granted. The lands of an intestate of which at the time of his death he is registered as proprietor, are therefore removed, by virtue of *The Inheritance Act* of 1867, from the provisions of *The Real Property Act* of 1861. The provisions of *The Intestate Estates Act*, 1867, making the production of letters of administration conclusive evidence that the deceased died intestate, do not dispense with the proof of the death, but the production of such letters of administration only establishes conclusively the intestacy when the intestate is in fact proved to be dead. *PANNAN v. PANNAN*, 7 S.A.L.R. 54. (Full Court.)

[Q., Act of 1861, s. 89.]—Intestacy—Refusal of heir-at-law to enter transmission.—In an action brought by C. B., as next friend of C. N. B., an infant, a verdict was given for the defendant. C. B. was registered proprietor of land held in trust to the use of his daughter, R. B., as she should by deed or will appoint in default for her own right heirs. R. B. died an infant, unmarried, leaving neither will nor deed. C. B. refused to execute a transfer to himself. Ordered that C. B. pay the costs in the action, including costs of the application; that the Registrar-General enter up transmission of the land to C. B. as heir-at-law to R. B. Leave was granted to defendant to issue execution against C. B., and to enter a caveat until registration. *BOUEL v. MUNICIPALITY OF COOKTOWN*, 2 Q.L.J. 93. (Full Court.)

[S.A., Act of 1861.]—Jurisdiction of Supreme Court.—*Quære*, whether the Supreme Court has any jurisdiction on applications for transmission by death, and whether the absolute and final decision in all such cases is not vested in the Registrar-General and the Lands Titles Commissioners. *LANGE v. RUWOLDT*, 7 S.A.L.R. 1. (Full Court.)

[VICTORIA, Act of 1866, s. 60.]—Married woman—Power to dispose of real estate by will.—Certain land under *The Transfer of Land Statute* was conveyed to a married woman with her husband's consent and paid for out of her separate estate. Held, that as to the land, she had a disposing power by will. *In re TAEGERTHA*, 10 V.L.R. (L.P. & M.) 89. (Full Court.)

Married woman—Forms—Nomination of trust—M. was the registered proprietor of land under the Act. On 6th April, 1866, a deed of settlement was executed, by which the land was vested in trustees for her use, and power was given to her to dispose of it by will or otherwise, as she thought fit. On 7th April she married W., but no record of the marriage was entered on the certificate of title, and there was no nomination of trustees lodged in the Registry. She made her will on 15th May, 1868, and devised the land to H. and G., who were appointed trustees and executors of the will. She died on 11th August, 1868. The trustees applied for transmission of the property to them. The Registrar declined to grant transmission on the grounds (1) That the deed of 6th April was not in accordance with any of the forms provided by the Act; (2) That no memorandum of the indenture was registered in the register book. Held, that the last objection was fatal; that the trustees had not produced any memorandum of transfer to them by the deceased,

under which alone they would be entitled to a certificate. As nothing, therefore, passed by that deed, there was nothing to support the uses appointed by the will, which was made under coverture, and was, therefore, inoperative so far as the land was concerned. The application was dismissed, the costs incurred by the Registrar, including the costs of counsel, to be paid out of the estate. *In re GRANT and HALL*, B.C.R., 2nd September, 1872. (Full Court.)

[N.Z., Act of 1885, ss. 115, 117.]—Probate necessary.—Transmission to executrix and devisee—Registration—Administration Act, 1879.]—P., the registered proprietor of land under *The Land Transfer Act*, 1885, by his will devised it to his wife and appointed her sole executrix, and died after the coming into operation of *The Administration Act*, 1879. She applied to have a transmission to her as devisee, although she had not proved the will. Held, that the Registrar was justified in requiring probate to be obtained before registering. *In re PETERSEN*, 9 N.Z.L.R. 538. (Court of Appeal.)

[N.S.W., Act of 1862, ss. 3, 39.]—Registration—Necessity for—Meaning of "instrument"—Will.—By s. 39 of *The Real Property Act* of 1862, "no instrument, unless registered in manner hereinbefore prescribed, shall be effectual to pass any estate or interest in any land under the provisions of this Act," and by s. 3 "instrument" includes will. L.'s will was registered after filing of statement of claim but before hearing. Held, (1) That as plaintiffs were setting up an equitable right and not a claim to an estate or interest in land, s. 39 did not apply; (2) If the section did apply, registration before hearing would be a sufficient compliance with it. *LITTLE v. DARDIER*, 12 N.S.W.L.R. (Eq.) 319. (Full Court.)

[N.Z., Act of 1885.]—Registration—Transmittee, Powers of—Right of Registrar to inquire into trusts.—As to the rights of a person to whom transmission by death of the fee-simple of land has been registered, to sell without reference to the trusts with which his proprietorship is affected, see *In re Transfer FAIRBROTHER to ALLAN*, 15 N.Z.L.R. 196. (Full Court.)

[VICTORIA, Act of 1866, ss. 88, 129 (3).]—Registration—Powers of transmittee—Right of executor to give transfer before payment of debts—Administration Act, 1872 (No. 427) ss. 6, 10.]—The Commissioner of Titles has no power to register a transfer from an executor to a devisee until proof has been given that all the debts owing by the testator's estate have been paid or duly provided for. *Ex parte WISEWOULD*, 11 A.L.T. 182. (Full Court.)

[N.Z., Act of 1885.]—Registration—Powers of transmittee—Land held by executor.—An executor or administrator registered as proprietor of land by transmission takes and holds the same with the same title and subject to the same equities and obligations as did the person whose representative he is. *KISSICK v. BLACK*, 10 N.Z.L.R. 519. (Full Court.)

TRESPASS.

See ADVERSE POSSESSION.

TRUSTEE.

See INFANT.

In bankruptcy or insolvency

See BANKRUPTCY.

Right of to bring land under Act

See BRINGING LAND UNDER ACT.

For benefit of creditors—Duty of, to assign over onerous lease

See LEASE.

STEVENSON AND SONS, LTD. v. BRIND,
21 V.L.R. 109; 16 A.L.T. 166.

TRUSTS AND EQUITIES.

Remedy where Crown grant improperly obtained in order to defeat trusts

See CROWN GRANT.

A registered proprietor is subject to equities existing before the land was brought under the Act

See CERTIFICATE OF TITLE — (B)
Conclusive effect.

SEMPILL v. JARVIS, 6 S.C.R. (N.S.W.)
(Eq.) 68.

TRUSTS AND EQUITIES.

- A. POWERS OF TRUSTEE.
- B. RECOGNITION OF TRUSTS.
- C. PRIORITIES.
- D. NOMINATION OF TRUSTS.
- E. PRACTICE.
 - (1) *Jurisdiction.*
 - (2) *Vesting Order.*
- F. SPECIFIC PERFORMANCE.
- G. UNREGISTERED INSTRUMENTS.

A. POWERS OF TRUSTEE.

(See also CERTIFICATE OF TITLE — (B) *Conclusive effect.*)

(See also RECOGNITION OF TRUSTS, *infra*.)

[N.Z.]—Bringing land under Act—*Trustee without power of sale.*—It is a gross irregularity to issue a certificate of title to trustees who have no power of sale. *GEORGE v. A.M.P. SOCIETY*, N.Z.L.R. 4 S.C. 165. (Full Court.)

[VICTORIA, ACT OF 1866, s. 17 (1) and (5).]—Bringing land under Act—*Trustee without power of sale.*—Trustees in fee-simple of land, not having power of sale, are owners within s. 17 (1), and entitled to bring land under the Act. *In re BENN and GRICE*, 12 V.L.R. 366. (Full Court.)

B. RECOGNITION OF TRUSTS.

(See also CERTIFICATE OF TITLE — (B) *Conclusive Effect.*)

[N.S.W., ACT OF 1862, ss. 33, 40.]—Certificate of title not paramount to a personal equity.—In 1870 E. H. conditionally purchased from

the Crown 60 acres of land in the name of his son, P. H. (the plaintiff), then an infant six years old. In 1875 this selection, with several others, was sold to the defendant, the notification of transfer being signed by the plaintiff, then eleven years old. Afterwards, and before the plaintiff came of age, the defendant obtained the Crown grant and a certificate of title under *The Real Property Act*. The plaintiff on coming of age repudiated the transfer. *Held*, that the plaintiff had a personal equity against the defendant, and that he had a right to call on defendant for a transfer, and that there was no resulting trust to the father. *Held* also, that the fact of the defendant having obtained a certificate of title under *The Real Property Act* was no bar to the plaintiff's right to establish his equity. (*SEMPILL v. JARVIS*, 6 N.S.W. S.C.R. (Eq.) 68, followed.) *HALL v. LODER*, 7 N.S.W.L.R. (Eq.) 44. (Full Court.)

[N.Z. ACT.]—*Cestui que trust, Rights of.*—A certificate of title under the Act does not, as between the immediate parties to a contract, alter their rights against and liabilities to each other. There is nothing in *The Land Transfer Act* which as between the trustee and *cestui que trust* puts an end to the trust, and the *cestui que trust* may always enforce his rights against the trustees, though the trustees may have acquired a certificate of title. *PAORO TOROTORO v. SUTTON*, 1 N.Z.J.R. (N.S.) S.C. 57. (Full Court.)

[S.A., ACT OF 1861, s. 124.]—Contract.—An executory contract for the sale of land under *The Real Property Act*, 1861, though not in any form provided by such Act, and therefore incapable of registration, can, as between the immediate parties thereto, be enforced in equity. Trusts may exist and be enforced (except after a sale to an innocent purchaser) against the proprietor of the estate or interest appearing on the register. *CUTHBERTSON v. SWANN*, 11 S.A.L.R. 102. (Full Court.)

[VICTORIA, ACT OF 1866.]—Administrator—*Power of, to sell lands.*—An administrator of land under *The Transfer of Land Statute* can sell or mortgage, and is only accountable to his *cestui que trust* for what he does. *DROOP v. COLONIAL BANK*, 7 V.L.R. (Eq.) 71. (Full Court.)

[VICTORIA, ACT OF 1866, s. 50.]—Adminis-tratrix—*Voluntary conveyance—Land purchased on security of trust estate—Statute of Frauds—Consideration—Void agreement—Nominal consideration—Practice of Office of Titles.*—Land purchased by a trustee with money raised by mortgage of the trust estate declared subject to the same trusts. An ante-nuptial agreement, void under the Statute of Frauds, cannot form a valuable consideration for the conveyance of land after the marriage. Section 50 of *The Transfer of Land Statute* does not apply to a voluntary transfer of land. An administratrix held, as part of the intestate's estate, land (lot 6) of which the testator was at his death proprietor in fee under *The Transfer of Land Statute*, and other land (lot 7) of which he was tenant only. She purchased the latter, mortgaged both lots to secure the payment of the purchase money, and became, in her own name, registered proprietor in fee of both, subject to the mortgage. She then married again, having, before the marriage, had an agreement (not in writing) with her pro-

posed husband, who did not know that she held as administratrix, that if he would expend money in improvements on both lots and pay off the mortgage she would transfer lot 7 to him. After the marriage he expended considerable sums of money in improving them; she transferred lot 7 to him for the nominal consideration of £5, and he became registered proprietor of it. In a suit for the administration of the intestate's estate: *Held*, that both lots were subject alike to the trusts of the administration; that the agreement before marriage was void under the Statute of Frauds, and formed no valuable consideration for the transfer of lot 7, and that the transferee was not protected by s. 50 of *The Transfer of Land Statute*. *Crow v. CAMPBELL*, 10 V.L.R. (Eq.) 186. (Full Court.)

[S.A., ACT OF 1861.]—Devisee—Trust estates—Purchaser—Intestate Real Estates Distribution Act, 1867.—A devisee under a devise of trust estates, of which the testator was seised in fee-simple as administrator of an intestate who has died after the *Intestate Real Estates Distribution Act*, 1867, came into operation, is not entitled to sell such land without the consent of the persons beneficially interested in the same, nor will the Registrar-General be compelled to register as proprietor of such land under the provisions of *The Real Property Act*, 1861, a purchaser from such devisee without such consent. *In re MACCARTHY*, 11 S.A.L.R. 39. (Full Court.)

[Tas., ACT OF 1862, s. 66.]—Devisee—Land devised in trust.—To secure repayment of a loan from B. to M., B. was registered proprietor of M.'s land, and at the same time a deed was drawn up reciting that the land had been transferred to B. to secure the loan, and declaring that B. held the land on certain trusts. By his will he devised to trustees all the estates vested in him as trustee, subject to the trusts affecting the same, and on his death the trustees of his will applied to be registered as proprietors, but were refused, on the ground that no notice of trusts is allowed to appear on the register. *Held*, that the lands passed to the trustees by operation of B's will, and that the trustees should be registered proprietors thereof by virtue of s. 66, which allows a devise of registered land to be registered by the description of land vested in trust. *In re TRUSTEES BRODRIBB'S WILL*, Jan. 29, 1875, Tas. Dig., col. 105. (Full Court.)

[VICTORIA, ACT OF 1866, ss. 38, 129.]—Executor—Transfer by—Administration Act, 1872 (No. 427), s. 6, 10.—The Commissioner of Titles has no power to register a transfer from an executor to a devisee until proof has been given that all debts owing by the testator's estate have been paid or duly provided for. *Ex parte WISEWOLD*, 11 A.L.T. 182. (Full Court.)

[N.Z., ACT OF 1885, ss. 117, 118, 175 (4).]—Executrix registered as proprietor—Production of probate—Evidence of due exercise of power—Transmission—Administration Act, 1879, s. 16—Administration Act, 1879, Amendment Act, 1885, s. 8.—Transmission of the estate of a deceased registered proprietor of land under the Land Transfer Act to his widow as executrix was duly registered, and a transfer by her to a purchaser, not describing the transferor as executrix, nor purporting to be made as a sale for the purpose of paying the debts of her late

husband, was presented for registration. *Held*, that under s. 16 of *The Administration Act*, 1879 (which provides that an executor to whom transmission has been registered shall, for the purposes of dealing, be deemed to be the absolute proprietor), the District Land Registrar, not having express notice of a breach of trust, was bound to register without requiring production of the probate or other evidence that the executrix was acting within her legal powers. *In re Transfer FAIRBROTHER to ALLAN*, 15 N.Z.L.R. 196. (Full Court.)

[N.Z., ACT OF 1885, ss. 55 to 57.]—Fraud—Knowledge of trust.—B., having bought and paid for a piece of land under *The Land Transfer Act*, had the same transferred to C., who thereupon became registered as proprietor. B. went into and remained in possession of the land, and held the certificate of title. C. died intestate, leaving a widow, who subsequently took out administration of his estate, and with full knowledge of the facts of the case, obtained possession of the certificate of title and registered a transmission of C.'s estate to herself as administratrix, by means of which she became the registered proprietor of the land. She then brought an action against B., who remained in possession, to recover possession and mesne profits. B. set up the facts to justify his occupation, and counterclaimed for a decree that the plaintiff should transfer the land to him. *Held*, (1) that the administratrix by transmission took as the representative of the deceased intestate, and subject to the same obligation; and that the trust enforceable against the deceased was enforceable against her; (2) that the plaintiff's conduct in registering her transmission amounted to fraud, and that her registration as proprietor had been obtained by fraud, and was therefore not within the protection of ss. 55 or 56 of the Act. *KISSICK v. BLACK*, 10 N.Z.L.R. 519. (Full Court.)

[S.A., ACT OF 1861, s. 79.]—Infants—Breach of trust—Tortious sale—Effect of bringing land under Act upon trusts.—A testator devised and bequeathed the whole of his real and personal estate to trustees upon trust (after payment of debts, &c.), to pay over the annual income, rents, &c., to his wife to and for the maintenance of herself and the support and education of his children so long as she should remain his widow during the remaining period of her natural life. Testator died 14th October, 1863, leaving his widow and four infant children. After the death of the testator, the trustees sold for £635, and made application under the 79th section of *The Real Property Act*, 1861, to be registered as proprietors of certain lands forming portion of the estate, and the certificate of title was issued in the name of the purchaser, £335 of the purchase money being paid in cash, and the balance secured on mortgage. Subsequently, and shortly before suit instituted on behalf of the infant children, the trustees repurchased the property for £200, and obtained a transfer to themselves of, and executed a declaration that they held the same, subject to the trusts of the will. On bill filed on behalf of the infant children: *Held* (1) That the children were entitled to elect either to take the land or the proceeds of the sale, and that the latter course being more to their advantage, the trustees must pay over to them the amount of such proceeds; (2) That the land before the sale having been under a system which

recognised and protected the equitable interests of the infants, had not by repurchase under the Real Property Act, which ignores equities, been reinstated to its former position. Trustees ordered to pay infants costs of suit as between attorney and client. *St. George v. Burnett*, 10 S.A.L.R. 47. (Full Court.)

[S.A., Act of 1861.]—*Lease—Breach of trust—Liability of retiring trustees for breach by new trustee.*—R. made his will, whereof he appointed K. and M. trustees, and devised to them certain properties upon trust for his widow for life, and after her death to be sold and the proceeds divided between the plaintiffs and other persons. The widow and K., being desirous of granting a lease to K. of part of the trust property, K. resigned the trusteeship, and W. was appointed in his stead. The land was brought under the Real Property Act in the names of M. and W., and a lease was made to K. *Held*, that the making of the lease was a breach of trust, and that the retiring trustee, the continuing trustee, and the new trustee were all liable for any damage sustained by the beneficiaries. *Rowell v. Keats*, 19 S.A.L.R. 8. (Full Court.)

[Victoria, Act of 1866, ss. 38, 50, 129 (3), 135; Act of 1885, s. 72.]—*Mortgage to trustees—Refusal of Registrar to register discharge—Costs.*—Where the discharge of a mortgage, of which trustees are the mortgagees, is presented for registration by the registered proprietor, the Registrar is not at liberty to refuse to register such discharge on the ground that it was not shown to his satisfaction that the dealing was authorised by the trust. Costs were ordered to the applicant under s. 72 of the Act of 1885. *Ex parte Campbell*, 9 A.L.T. 183. (Full Court.)

C. PRIORITIES.

[N.Z., Act of 1885.]—*Charging order—Transfer.*—A charging order only binds lands subject to the equities subsisting at the time, and will therefore be removed to enable the registration of a transfer which was executed prior to the making of the charging order. *In re Mutual Benefit Building and Investment Society, Ex parte Baynes*, N.Z.L.R., 5 S.C. 293. (Full Court.)

[N.Z., Act of 1885.]—*Charging order—Want of beneficial interest—Cancellation under rule 314.*—A charging order only affects property in which the defendant is beneficially interested, and registration gives no priority over an unregistered transfer to a purchaser in good faith, made before the issuing of the order. *In re Beattie*, N.Z.L.R. 5 S.C. 342. (Full Court.)

[N.Z., Act of 1885.]—*Mortgage by way of absolute transfer.—Mortgage by transferee—Caveat—Rival equities—Negligence.*—H., the registered proprietor under the Act of 1885 of a section of land, borrowed money from K. upon the security, *inter alia*, of such land. Instead of giving K. a mortgage, H. signed an absolute transfer of the land in his favour. The consideration of the transfer was stated as £100, and the certificate of title and transfer were handed to K., who agreed not to register the transfer. He did register it, and borrowed money after such registration from the National Bank, to secure which he executed in favour of the bank a mortgage over the land. The bank received the certificate of title and mortgage from K. and held over

the latter unregistered. Subsequent dealings between H. and K. entitled the former to have his land transferred back free of encumbrances, and shortly afterwards H. lodged a caveat to prevent dealings with the land. After the lodging of such caveat the bank tendered its mortgage with the certificate of title for registration. Upon receiving notice of this, H. brought an action to uphold his caveat, and to compel the bank and the Official Assignee of K., who had become bankrupt, to transfer the land to him free from encumbrances. *Held*, that H. having falsely represented the transactions between himself and K. to be a sale and not a mortgage, and so put K. in a position to become the registered proprietor, and as such to obtain the advance from the bank, was not on an equality with the bank, and could not enforce his equity as against the bank, upon the principle that, of two innocent persons affected by fraud, the one who by his negligence or conduct has made it possible for the fraud to be committed should be the sufferer rather than the other. *Held* also, that the fact of the bank having held over its mortgage unregistered made no difference to the position, it not appearing that H. had been in any way misled or affected by the non-registration. *Honeybone v. National Bank, &c., Limited*, 9 N.Z.L.R. 102. (Full Court.)

[Q., Acts of 1861 and 1877.]—*Nomination of trustees—Power of attorney given by cestui que trust—Assignment by cestui que trust—Subsequent assignment under power of attorney—Forgery—Notice.*—B., by a nomination of trustees under *The Real Property Act* of 1861, transferred certain lands to trustees upon trust for B. for the joint lives of himself and his wife, and after his death upon certain other trusts. In 1885 B. executed a power of attorney in favour of R., authorising him to mortgage the lands; but afterwards assigned his interest to R., who assigned half the interest for value to C. In 1886 R., pretending to act in pursuance of the power of attorney and of a letter from B., which was a forgery, mortgaged B.'s supposed interest to H. for £1000. H. gave notice of the mortgage to the trustees, to whom C. had given no notice. On the question of priority arising between C. and H.: *Held*, that during the lives of B. and his wife B. took in equity a freehold estate in the land, and therefore no notice of assignment was necessary to be given to the trustees; but C. being first in point of time, was prior in right to H. *In re Rutter*, 3 Q.L.J. 105. (Full Court.)

[Victoria, Act of 1866.]—*Sale by sheriff—Prior purchase—Unpaid purchase.*—A purchase made at a sheriff's sale of the interest of a registered proprietor, and perfected by a transfer, was held void as against the interest of a prior purchaser from the registered proprietor, but good as against the registered proprietor's right and interest in respect of unpaid purchase money. *Brew v. Jones*, 2 V.R. (Eq.) 20; 2 A.J.R. 6. (Full Court.)

[Victoria, Act of 1890, s. 139.]—*Sale by sheriff—Prior equitable interests.*—A vendor sold land upon the condition, *inter alia*, that upon default by the purchaser in payment of promissory notes which formed part of the purchase money the vendor might rescind the sale. Subsequently, the vendor assigned all his interest in the land, and the proceeds arising from the sale, to a company upon certain trusts, which they

accepted and entered upon. Thereafter the promissory notes were overdue and dishonoured, when a creditor obtained judgment against the vendor, and issued execution thereon, and on the 28th May, 1893, lodged with the Registrar a writ of *fi. fa.* under s. 139 of *The Transfer of Land Act*, 1890, together with a statement specifying the lands above mentioned, which still stood in the name of the vendor, as those sought to be affected by the writ. On 28th July, 1893, the sheriff sold the whole of the lands under the *fi. fa.*, but on that date the company lodged for registration a transfer to them from the vendor, dated 26th June. In an action by the sheriff's vendee, claiming to be entitled as against the company to a transfer of all the estate and interest of the vendor in the estate: *Held*, that the sale by sheriff was subject to all the equitable claims to which in the hands of the vendor it was liable, and that the equitable claims of the company must prevail. *Rowe v. The Equity Trustees and Agency Co., Ltd.*, 21 V.L.R. 762. (Full Court.)

[S.A., ACT OF 1861.]—Sale by sheriff—Prior unregistered transfer and deposit of title.—The question of the rights of an unregistered transferee, and of the rights conferred by a deposit of a certificate of title as against the sheriff's transferee, discussed. *In re WADHAM'S Caveat*, 13 S.A.L.R. 70. (Full Court.)

[S.A., ACT OF 1861; ACT OF 1878, ss. 41, 67.]—Sale by sheriff—Prior unregistered transfer.—The sheriff has only power to sell the debtor's beneficial interest in the land, and the rights of other beneficiaries antecedent to the writ of *fi. fa.* will be protected on proper proceedings being taken at any time before the registration of the sheriff's transfer. L. duly executed a transfer to B. at a date prior to the registration of a *fi. fa.* on the land included in the transfer. The sheriff sold to T, and executed a transfer to him. *Held*, that B.'s unregistered transfer took precedence of the sheriff's transfer, and should be registered. *In re BOSQUET'S CAVEAT*, 17 S.A.L.R. 173. (Full Court.)

[VICTORIA, ACT OF 1866, ss. 49, 50.]—Specific performance—Sale of land—Uncertainty of agreement—Possession.—Although a written agreement for the sale of land was so uncertain as to the land intended to be sold that it would not be enforced at law, the Court held that possession, coupled with the agreement, was sufficient to make it enforceable in Equity, and that it could be enforced against a subsequent purchaser, with notice from the vendor, notwithstanding ss. 49 and 50 of the Transfer of Land Statute. *CUNNINGHAM v. GUNDRY*, 2 V.L.R. (Eq.) 197. (Full Court.)

[VICTORIA, ACT OF 1866, s. 50.]—Transfer—Notice of equitable interest to transferee before registration of.—The Transfer of Land Statute was not intended to abolish the principle of notice. Actual notice of an equitable interest in another given to a purchaser of land under the Act at any time before he has completed his title by getting his transfer registered is sufficient to entitle the person to whom the equitable interest is to prevent the issue of a clear certificate of title to such purchaser. *COWELL v. STACEY*, 13 V.L.R. 80. (Full Court.)

[Q., ACT OF 1861, ss. 98, 99; ACT OF 1877, ss. 12, 14, 15, 38.]—Specific performance—Agreement for sale—Caveat by purchaser—Transfer to a later purchaser who lodges transfer and certificate of title.—On 25th June D., being registered as proprietor, agreed to sell his land to H., who lodged a caveat against dealings on 1st July, which was duly registered on 15th July. On 26th June D. agreed to sell the same land to S., and on 14th July S. paid the purchase-money and received from D. a memorandum of transfer and the certificate of title, which, however, he did not lodge for registration until 13th August. H. afterwards brought an action against D. for specific performance and obtained a decree. *Held*, on a summons under s. 99. for withdrawal of the caveat, that *The Real Property Act* recognises the doctrine of specific performance, and that the caveat of H. had priority, and protected the prior equitable title of H. against any effort of S. to secure a paramount legal title by registration. *In re SCANLAN*, 3 Q.L.J. 43. (Full Court.)

D. NOMINATION OF TRUSTEES.

[Q., ACT OF 1861, ss. 77, 79.]—Equitable mortgage by deposit.—The deposit of a nomination of trustees creates an equitable mortgage. *BURRELL v. HOPE*, B.C.R. 15th August, 1871. (Full Court.)

[Q., ACT OF 1861, ss. 1, 3, 40, 77, 78.]—Schedule of trusts—Not an "instrument" under the Act—Interpretation clause—Life estate—Survivorship.—By a nomination of trustees the defendant, J. W., transferred certain lands to trustees. The schedule of trusts specified that the lands were to be held in trust "for and on behalf of W. W. (a minor) and S. G. W. (wife of J. W.) and for their sole use and benefit." S. G. W. died before W. W., who died after having devised all his real estate to the plaintiff. The defendant, J. W., never gave up possession to the plaintiff or to any person entitled under the nomination of trustees. *Held*, on demurrer, that the schedule of trusts was not an "instrument" under the Act, and that therefore the word "heirs" could not be imported. The beneficiaries obtained an estate for life only. *WALTERS v. ELDRIDGE*, 4 Q.L.J. 118. (Full Court.)

[Q., ACT OF 1861, ss. 77, 82.]—Stamp duty.—A document in form of a nomination of trustees, from W. and S. to W. and S as trustees for S. and Co., Ltd., was tendered to the Stamp Commissioners to assess the duty payable. The transferors and transferees were identical. Duty was demanded as on a conveyance, while the trustees claimed that it was liable to nominal duty only as an agreement. *Held*, that the instrument was in law invalid as a transfer, that it did not require stamp duty, but that it could not be registered as a transfer without payment of stamp duty. *In re WHITE AND SHAW*, 6 Q.L.J. 55. (Full Court.)

E. PRACTICE.

- (1) *Jurisdiction.*
- (2) *Vesting Order.*

- (1) *Jurisdiction.*

[VICTORIA, ACT OF 1866.]—Courts of Equity.—The immense power which *The*

Transfer of Land Statute gives to a proprietor of completely barring clear equities presents a reason for Courts of Equity readily interfering by injunction. *DAVIS v. WEEKEY*, 3 V.R. (Eq.) 13 A.J.R. 1. (Full Court.)

[N.Z., Act of 1870, ss. 41, 88, 89.]—Equitable jurisdiction of Supreme Court.—*Semble*, that the Land Transfer Act does not not exclude the equitable jurisdiction of the Court to deprive an applicant for registration of an advantage unduly gained, *KISSLING v. MITCHELSON*, N.Z.L.R. 3 C.A., 261. (Full Court.)

[N.Z., Act of 1885, ss. 55 to 57.]—Equitable jurisdiction.—Notwithstanding the provisions of ss. 55, 57 of the Act of 1885, the Supreme Court as a Court of Equity can and will enforce a trust against the holder of a legal estate in land under a certificate of title, where the facts would warrant the interference of a Court of Equity. *KISSICK v. BLACK*, 10 N.Z.L.R. 519. (Full Court.)

[S.A., Act of 1861.]—Reformation of instruments.—*Quare*, whether the equitable doctrine of the reformation of instruments is applicable to the documents affecting land under the provisions of *The Real Property Act*, 1861. *FERRETT v. CLARK*, 10 S.A.L.R. 202. (Full Court.)

(2) Vesting Order.

See also VESTING ORDER, *infra*.

[VICTORIA, Act of 1866]—Death of trustee.—*Land in name of surviving executor—Statute of Trusts*, 1864 (No. 234), s. 34.—P. devised realty to his wife for life, remainder to children, and appointed two executors but no trustee. One executor died and the other brought the unsold land under *The Transfer of Land Statute*, obtaining the certificate of title in his own name. Upon petition by the widow and children praying for a new trustee in the place of the deceased executor, and a vesting order vesting the unsold land in such trustee and the surviving executor, the Court made the order as sought. *In re PHILPOTT*, 4 V.L.R. (Eq.) 20. (Full Court.)

[Q., Acts of 1861 and 1877.]—Discharge of mortgage.—Land had been mortgaged to a building society; the mortgage had been paid off; the building society had ceased to exist, and no trace of a release could be found. An order was made on the petition of the mortgagor vesting in him the interest of the society in the mortgage. *In re CAIN*, 5 Q.L.J. 93. (Full Court.)

[VICTORIA, Act of 1866; Act of 1867, s. 12.]—Jurisdiction of Commissioner of Titles.—*Statute of Trusts*, 1864 (No. 234), s. 19—*Jurisdiction of Supreme Court*.—The only power of the Commissioner of Titles to make a vesting order as to lands under *The Transfer of Land Statute* (No. 301) is that contained in s. 12 of the Amending Act (No. 353). That section empowers him to make an order only in cases in which the Supreme Court would have such power under s. 19 of *The Statute of Trusts*, 1864 (No. 234), and such power can be exercised by him only after compliance with the formalities which would be observed by the Supreme Court; and, inasmuch as the Supreme Court would not make an order vesting land in new trustees without notice being first given to the old trustees in whose name it stood, the Commissioner has no power to do so until

such notice is given. *WERNER v. BOEHM*, 16 V.L.R. 73. (Full Court.)

[Q., Act of 1861, s. 86.]—Transfer void against trustee.—Where a transfer of property was declared void as against a trustee in insolvency, an order was made to cancel the certificates of title in the book, enter the vesting order, and issue new certificates of title. *In re WILDASH AND HUTCHISON, Ex parte MISKIN*, 1 Q.L.R. (Pt. II.) 47. (Full Court.)

F. SPECIFIC PERFORMANCE.

See PRIORITIES, *supra*.

(See also VENDOR AND PURCHASER, *infra*.)

G. UNREGISTERED INSTRUMENTS.

(See UNREGISTERED INSTRUMENTS (*infra*.)

See also LEASE.

UNDERTAKING.

See PRACTICE—*Stay of proceedings*.

UNREGISTERED INSTRUMENTS.

See CERTIFICATE OF TITLE—(B) *Conclusive effect (e) — Rights of occupier*.

See LEASE.

See MORTGAGE—*Power of sale*.

MATHIESON v. MERCANTILE F. AND A. CO., LTD., 17 V.L.R. 271.

Assignment of lease by way of mortgage.

See MORTGAGE—*Equitable mortgage*.
NAUMBURG v. ALBERTSON, 3 Q.L.J. 125.

Interest under, protected against fraud.
See FRAUD.

McELLISTER v. BIGGS, 8 App. Cas. 314.

Caveat in respect of unregistered mortgage.

See CAVEAT AGAINST DEALINGS.

Effect of unregistered mortgage.

See SALES BY SHERIFF.

Effect of unregistered transfer.

See SALES BY SHERIFF.

Right of unregistered transferee to notice of caveat, &c.

See CAVEAT AGAINST DEALINGS.

UNREGISTERED INSTRUMENTS.

See also LEASE (G.)

[S.A., Act of 1861.]—Forms — *Executory agreement*.—No instrument or agreement in respect of land under *The Real Property Act*, 1861 is of any validity or enforceable either at law or in Equity unless the dealing or transaction be

one contemplated by the Act, and such instrument or agreement be in the form provided by the Act. The Real Property Act contemplates no executory agreements, and no instruments that cannot be immediately registered. *LANGE v. RUWOLDT*, 6 S.A.L.R. 75. (Full Court.)

[VICTORIA, ACT OF 1866.]—Forms.—Instruments executed in the form provided by the Transfer of Land Statute are not, previous to registration, void of all effect, except as to conveying, passing, or conferring estates or interests and rights in land. They may, before registration, have effect as contracts between the parties to them, or operate as securities springing from the date of signing, and acts done by the parties under and in accordance with the contracts before registration may, as between the parties, be valid and effectual. *MATHIESON v. MERCANTILE FINANCE AND AGENCY Co., LTD.*, 17 V.L.R. 271. (Full Court.)

[VICTORIA, ACT OF 1890, ss. 139, 209.]—Unregistered transfer—Registration of *fi. fa.* on land transferred.—A transfer of property by a judgment debtor made before the service of the copy writ of *fi. fa.*, but not presented for registration prior to such service, cannot be registered during the period of three months from the date of the service of such writ. *In re SHEARS AND ADLER*, 17 V.L.R. 316. (Full Court.)

[S.A., ACT OF 1861, s. 39.]—Unregistered deed—Equitable right.—Although an unregistered deed is not effectual to pass any interest in land under s. 39 of the Act of 1861, yet it is effectual to pass an equitable right to set aside a certificate of title relating thereto which has been obtained by fraud. *McELLISTER v. BIGGS*, 8 App. Cas. 314. (Full Court.)

[VICTORIA, ACT OF 1890, ss. 63, 99, 100.]—Unregistered lease—Covenant to pay rent.—The lessor is entitled to sue the lessee on a covenant to pay rent contained in a lease of land under the Transfer of Land Act, even though the lease might be inoperative under the Act because not registered. *MUNRO AND BAILLIEU v. ADAMS*, 17 V.L.R. 703. (Full Court.)

UNPAID VENDOR.

Rights of against sheriff's transferee

See SALES BY SHERIFF.

USE AND OCCUPATION

By sub-lessee

See LEASE.

VENDOR AND PURCHASER.

Contract to give possession

See CERTIFICATE OF TITLE — (B)
Conclusive effect.

[TAB.]—Conditions of sale.—Where, by the conditions of sale, the vendor was to deliver the abstract, deducing his title from the Crown grant, and part of the land included in his

grant was by error subsequently included in D.'s certificate of title: *Held*, that as the vendor was bound to furnish external evidence establishing his priority over D., he could not comply with the condition. *SHARPE v. HADLEY*, June 12, 1883, Tas. Dig., col. 107. (Full Court.)

[N.Z., ACT OF 1885.]—Notice of unregistered agreement—Fraud—Wilful refusal to receive information—Forcible taking possession of certificate of title and transfer—Payment of purchase money.—The plaintiff S. sold and transferred land under *The Land Transfer Act* to the plaintiff M., with a verbal agreement reserving to himself certain rights over part of the land. The agreement was reduced into writing, but not signed, owing to its being mislaid. The transfer to M. was registered, but the certificate of title was held by the solicitor to both parties on behalf of S., pending the execution of the written agreement. M. then sold to the defendant, subject, as M. alleged, to the agreement with S., and the defendant agreeing to be bound by it. The defendant, however, alleged that she purchased and paid her deposit without any notice of the agreement with S. Subsequently to the payment of the deposit, M. and the defendant went to complete the transaction at the office of the solicitor who had acted for S. and M. The solicitor, by their instructions, prepared a transfer, which M. executed, and the defendant drew a cheque for the balance of the purchase-money, which she placed upon the solicitor's table. The solicitor then spoke of the agreement between M. and S., for whom he was still holding the certificate of title, and was explaining that it would be necessary for the defendant to execute an agreement for S.'s protection similar to that between M. and S., when the defendant, against the solicitor's will, seized the transfer and certificate of title, which were lying on the table, and ran off with them out of the office. In her hurry she took up her cheque with the other papers, and finding that she had done this, she returned towards the office, and meeting M. outside, paid the cheque to M., who received it and cashed it without the concurrence of the solicitor. The solicitor at once lodged a caveat in the name of M. for the purpose of protecting S., and the transfer to the defendant having afterwards been presented for registration, this action was brought by M. and S., and others interested, claiming specific performance by the defendant of her alleged agreement to take subject to the rights of S. *Held*, (1) (on the evidence) that the defendant was informed during the negotiations between her and M. of all the terms of the agreement between M. and S., and that she agreed to be bound by them, and purchased and paid her deposit on that understanding; but (2) that it was not necessary for the plaintiffs' case that more should be found than that the defendant had notice of the agreement between M. and S., or wilfully refused to listen when information was being given in regard to it; and that even if there had been no express agreement by the defendant to be bound by its terms, as she had wilfully parted with her purchase-money with notice of the rights of others, she could not have her transfer registered without securing those rights, or have claimed, if registered, to hold the land discharged of those rights. Decree for specific performance. *MILLARD v. COWDREY*, 14 N.Z.L.R. 12. (Full Court.)

[S.A., ACT OF 1861, s. 124.]—Remedies for deprivation—"Other action for the recovery of land."—The words "other action for the recovery of land," following the words "action of ejectment" in s. 124 of the above Act, refer to actions at law in the nature of ejectment which may by possibility come under the cognisance of a Court of Equity, but do not include a suit for specific performance. An executory contract for the sale of land under the Act, though not in any form provided by the Act, and therefore incapable of registration, can, as between the immediate parties thereto, be enforced in Equity. *CUTHBERTSON v. SWAN*, 11 S.A.L.R. 102. (Full Court.)

[N.Z., ACT OF 1885.]—Rescission—Negligent sale by trustees at under value—Notice.—Negligence by trustees in relation to a sale resulting in a sale of trust property at a greatly less price than otherwise would have been obtained is a breach of trust, and where the purchaser is at the time of the contract, and before the execution of it, actually aware of such negligence by his vendors, the Court will rescind the sale though completed. A sale by native trustees under the above circumstances was set aside, and the purchaser, who had been registered as proprietor under *The Land Transfer Act*, 1885, decreed to re-transfer to the *cestui que trust*. *TOKO REIHANA v. MOORE*, 8 N.Z.L.R. 315. (Full Court.)

[N.S.W.]—Specific performance.—Parties.—*Quere*, whether subsequent unregistered purchaser should be joined as a defendant in an action for specific performance of prior agreement for a lease against his vendor. *HOOD v. CULLEN*, 6 N.S.W.L.R. (Eq.) 22; 1 W.N. (N.S.W.) 117. (Full Court.)

Specific performance — Priorities between purchasers—Purchaser with notice of prior transfer—Effect of registration.—Specific performance of an agreement decreed against the vendor and a purchaser with notice of the agreement, although the purchaser had obtained and registered her conveyance, and the plaintiff's agreement was unregistered. *VOCKENSOHN v. ZEVEN*, 3 W. W. AND A.B. (Eq.) 11, 122. (Full Court.)

[Q., ACT OF 1861, ss. 98, 99; ACT OF 1877, ss. 12, 14, 15, 38.]—Specific performance—Priorities between purchasers.—On the 25th June, 1886, D. sold a piece of land to H., and having afterwards attempted to withdraw from the bargain, H., on 1st July, 1886, lodged a caveat against the land in the registry, which was registered on 15th July, 1886. On 26th June, 1886, D. sold the same piece of land to S., and on the 14th July S. paid the purchase money therefor, and received from D. a memorandum of transfer and the certificate of title for the said land, which, however, S. did not lodge in the registry till the 13th August, 1886. H. afterwards brought an action against D., and on the 2nd March, 1887, obtained a decree for specific performance of the agreement for the sale of the said land. On an application for the withdrawal of the caveat: *Held*, that the Real Property Act recognises specific performance of a contract for the purchase of land under the Act. *Held*, also, that the caveat of H. being first on the register, protected the prior good equitable title of H. against any effort of S. to secure a paramount legal title by registration. *In re SCANLAN*, 3 Q.L.J. 43. (Full Court.)

[TASMANIA, ACT OF 1886, ss. 135, 136.]—Specific performance—Error in grant—Vendors seeking to enforce contract of sale—Costs of proceedings.—A vendor of land under the Real Property Act instituted proceedings to compel a purchaser to complete a contract of sale, but being unable to give a title, owing to an error in the certificate of title for adjoining lands, which erroneously included part of the land sold, and being unable to obtain from the Recorder of Titles a summons under s. 136 for the correction of that certificate of title, obtained no relief, and was ordered to pay the purchaser's costs of the proceedings. *SHARPE v. HADLEY* (Badger No. 3), Tas. Dig. col. 107. (Full Court.)

[S.A., ACT OF 1861.]—Specific performance—Agreement for sale of land.—A., the registered proprietor of the fee-simple of a section of land, entered into an agreement for the sale of a portion of the same to B., upon certain terms as to payment specified in the said agreement. These terms were duly complied with, but in the meantime A. had died, devising and bequeathing all his real and personal estate in trust for his wife and children. In an action for specific performance by B. it was held that an instrument purporting to transfer or affect land under *The Real Property Act*, 1861, but not in the form prescribed by such Act and incapable of registration under it, conveys no estate or interest in the land at law or in Equity, and cannot be specifically enforced. It may confer a right to damages for its non-performance. *Semble*, that no executory contract for the sale of land under the above Act is valid. *LANGE v. RUWOLDT*, 7 S.A.L.R. 1. (Full Court.)

[N.Z., ACT OF 1870.]—Specific performance—Notice of breach of trust—Mistake of law—Irregularity.—Where trustees dealt with the trust property in a manner not authorised by the trust deed, and afterwards a certificate of title under *The Land Transfer Act*, 1870, was improperly issued in favour of one of the trustees under the erroneous impression that he was a sole trustee, but it appeared that the mistake was *bonâ fide*, and had not resulted in any loss to the trust estate: *Held*, that the holder of the certificate of title could make a valid contract of sale, which could be enforced against a purchaser. It is a gross irregularity for a certificate of title to be issued to trustees who have no power of sale.

A reversionary interest in converted realty was vested in trustees upon certain trusts. No power was given to invest in land. On the reversionary interest falling into possession, the trustees, with the consent of the tenant for life, took land instead of money. The parties to the deed of settlement afterwards purported to revoke the settlement and declare new trusts, being erroneously advised that they had power to do so. One trustee retired, and the other brought the land under the provisions of the Act in his own name. Afterwards the plaintiff, who was husband of the tenant for life, was appointed a trustee, and the land was transferred to him alone by the other trustee, who supposed he had retired. The plaintiff next lodged a deed in the Land Registry Office, by which he declared that he held the land upon the trusts of the first settlement as modified by the second. The plaintiff contracted for the sale of the land to the defendant. The defendant received notice of all the above transactions and refused to complete. *Held*, that the

defendant would not be guilty of fraud in completing, and need not see to the application of the purchase-money, and consequently would obtain an indefeasible title. *GEORGE v. A.M.P. SOCIETY*, N.Z.L.R. 4 S.C. 165. (Full Court)

[VICTORIA, ACT of 1866, s. 42.]—**Specific performance**—*Contract of sale*—*Restrictive covenant*—*Encumbrance on certificate of title*—*Local Government Act* (No. 506), ss. 165, 169.—The defendant, the owner of land under the Act, by deed agreed to sell to the plaintiffs a portion thereof for the erection thereon of Municipal buildings; and it was further agreed that upon payment of half the purchase money and the erection of the buildings, the defendant would transfer the land without payment of the balance. The plaintiffs erected the buildings and paid half the purchase money; but the defendant refused to execute an absolute transfer under the statute, as she would thereby lose the benefit of the plaintiff's agreement for continual user. *Semble*, that the agreement of the plaintiffs for continual user would bind their successors, and that such obligation might be made an encumbrance upon the certificate of title. *Held*, that at all events the defendant was bound to execute a transfer with such security as she could get. *MAYOR OF BRUNSWICK v. DAWSON*, 5 V.L.R. (Eq.) 2.

[VICTORIA, ACT of 1866.]—**Title, objection to Requisition on title**.—A vendor sold land as being under *The Transfer of Land Statute*. The conditions of sale treated the land as being under the statute, but contained a clause enabling the vendor to cancel any sale if the purchaser should make or insist on "any objection to or requisition on the title or otherwise which the vendor shall be unable or unwilling to remove or comply with." The land turned out not to be under the statute, and on the purchaser demanding production of the certificate of title, the vendor cancelled the sale. On bill by the purchaser for specific performance: *Held*, that as a more secure title was given by a certificate than under the general law, the demand for the production of the certificate was not an objection to or requisition on the title so as to enable the vendor to rescind. That the whole system of the objections and requisitions was based upon the production of a certificate of title, and the words "or otherwise" in the conditions did not include a demand for the certificate. *MATTHEWS v. JAMES*, 8 V.L.R. (Eq.) 188; 3 A.L.T. 146. (Full Court.)

VESTING ORDER.

See MORTGAGE—*Foreclosure*.

See SALES BY SHERIFF—(F.) *Procedure*.

See TRUSTS AND EQUITIES.

See VENDOR AND PURCHASER.

Jurisdiction of Supreme Court—*Jurisdiction of Commissioner of Titles*

See PRACTICE.

[N.S.W.]—**Vesting order**—*Constructive trustees*—*Executed contract*—*Trustee Act*, 1852.—A contract for sale of certain lands under *The Real Property Act* was executed in 1873, but never registered. Some of the vendors had died since without leaving representatives in the colony. Upon a petition by the purchaser, the Court, being satisfied that the contract was exe-

cuted, declared vendors trustees within the meaning of the Act of their respective shares, and made a vesting order in favour of the purchaser. *In re VAUGHAN*, 14 N.S.W.L.R. (Eq.) 166. (Full Court.)

[Q., ACT of 1861, s. 33.]—**Vesting order**—*Non-production of certificate of title*.—When the vendee of land from the sheriff under the Real Property Act cannot produce the certificate of title, a vesting order will be refused. *CHAMBERS v. BONAR*, 1 S.C.R. (Q.) 160. (Full Court.)

VOLUNTARY SETTLEMENT.

See CERTIFICATE OF TITLE—(B) *Conclusive effect*.

Post-nuptial settlement—*Effect of bankruptcy of settlor*

See BANKRUPTCY.

VOLUNTARY TRANSFER.

See BANKRUPTCY.

See TRANSFER.

Not protected by absence of notice of fraud

See FRAUD.

BIGGS v. McELLISTER, 14 S.A.L.R. 86.

WAIVER

Of lapse of caveat

See BRINGING LAND UNDER ACT.

WILL.

See TRANSMISSION.

Of married woman

See TRANSMISSION.

Necessity for registration of will before hearing in action brought to enforce interest in land given by will

See TRANSMISSION.

LITTLE v. DARDIER, 12 N.S.W.L.R. (Eq.) 319.

WITHDRAWAL

Of application to bring land under Act

See BRINGING LAND UNDER ACT—(F) *Miscellaneous cases*.

IRELAND v. PAYNE, 28th November, 1882, Tas. Dig., Col. 103.

WITNESS TO INSTRUMENT

See INSTRUMENTS AND DOCUMENTS OF TITLE—(B) *Attestation and execution*.

WORDS.

Interpretation of

See INTERPRETATION.

WRIT OF EXECUTION.

Entered on title—*Removal of*

See CAVEAT AGAINST DEALINGS.

A D D E N D A.

[N.Z., Act of 1870, ss. 25 *et seq.*].—Bringing land under Act—*Married woman*—*Separate estate*—*Restraint on anticipation*—Miller mortgaged his land to a building society, and subsequently conveyed it to trustees in trust for himself for life till bankruptcy or alienation, and afterwards in trust for his wife for her separate use without power of anticipation. The trustees joined with Miller and his wife in a mortgage to a bank. The building society released to the bank, and the bank conveyed to the present applicant. The Registrar refused to bring the land under the Act. He was ordered by the Court to proceed with the application on the following grounds:—(1) The proviso for defeasance on alienation was bad; (2) the effect of the settlement therefore was to give the settlor an estate for life with remainder to his wife; (3) that as the wife took no interest during her husband's life, the settlement for the separate use could not extend to the present but to a possible future coverture; (4) consequently, the wife could, with her husband's concurrence, dispose of her reversionary interest, the restraint on anticipation being annexed to the separate estate only. *In re MARGIE*, 2 N.Z.J.R. (N.S.) S.C. 163.

[N.Z., Act of 1870, ss. 25, 115.].—Bringing land under Act—*Person beneficially interested*—*Adverse possession*—*Lyttleton and Christchurch Railway Act*, 1860, ss. 2, 3—*Land Clauses Consolidation Act*, 1845, ss. 84, 123.—A. applied to the District Land Registrar to bring certain land under the Act. The application described part

of the land as being in the wrongful possession of the Lyttleton and Christchurch Railway, and it appeared that the Superintendent of the Province of Canterbury had been in undisputed possession of such part since the railway was made, but that no compensation had been paid, nor any steps taken to assess compensation, except the service of a notice to treat, in January, 1868, by the then Superintendent. The Registrar refused to proceed with the application unless with the consent of the Superintendent, as being a "person beneficially interested" in the land within the meaning of s. 25 of the Act of 1870. On summons by the applicant under s. 115, requiring the Registrar to substantiate and uphold the grounds of his refusal: *Held*, that the course adopted by the Registrar was justified, notwithstanding the fact that no compensation had been paid nor any notice to treat served within three years of the passing of the Special Act; ss. 84 and 123 of *The Lands Clauses Consolidated Act*, 1845, being inconsistent with ss. 2 and 3 of the Special Act, and therefore not to be read as inconsistent therewith. *In re HOWES*, 1 N.Z.J.R. 113.

[VICTORIA, Act of 1866, s. 117.].—*Caveat*—*Order extending*—*Jurisdiction*.—An order extending the operation of a caveat, headed "In the Matter of *The Transfer of Land Statute*," shows statutory jurisdiction on its face, and it is not necessary that it should show that an undertaking or indemnity has been dispensed with. *In re Caveat of FEARNLEY*, 2 A.L.T. 32.

ABBREVIATIONS IN COMPARATIVE TABLES.

C. "Contrast"
cf. "Compare."

[N.B.—Wherever in the tables neither C. nor cf. is used, it may be inferred that the sections compared are almost or quite identical.]

CORRIGENDA.

THE first line of the First Comparative Table should read (from the Queensland section to the Western Australian):

1	|	3	|	6	|	1	|	..	|	3
---	--	---	--	---	--	---	--	----	--	---

In last line on p. xxxvii., for "1887" read "1877."

APPENDIX.

COMPARATIVE TABLES OF STATUTES.—TABLE I.

New South Wales.	SUBJECT MATTER OF SECTION.	Queens-land.	Victoria.	South Australia.	Tasmania.	New Zealand.	Western Australia.
<i>Act of 1862.</i>							
1	Laws inconsistent not to apply to lands under Act	1	3	6	1	1	1
2	Short Title ..	2	1	1	2	1	1
3	Interpretation { (a.) Meaning of terms .. (b.) Words of limitation unnecessary .. (c.) Effect of variation of scheduled form by Registrar (<i>see s. 90, post</i>) ..	3	4	3 (a)	3	2	4, 14
	PART I.—APPOINTMENT AND POWERS OF EMPLOYEES.		88	3 (b), 76		214	81
4	Existing officers to perform duties under Act ..	187	187	cf. 275		215	238
		4, and see Act of 1884	..	..	..	..	..
5	Appointment of Deputy Registrars and Examiners of Titles	cf. Act of 1884, s. 3	..	..	cf. 6	..	..
6	Appointment of Commissioners (repealed by 57 Vic., No. 7, s. 2, <i>post</i>)	..	..	..	..	..	..
7	Registrar's seal of office ..	8, Act of 1884, s. 5	10	21	8, 91	9	10
8	Functions of Deputy Registrar ..	Act of 1884, s. 3	..	..	..	..	11
9	Examiners and commissioners not to practise ..	..	..	..	..	..	12
10	Oaths of office ..	6	..	..	7	..	13
11	Powers of Registrar—(1.) To inspect documents .. (2.) To summon witnesses .. (3.) To administer oaths .. (4.) To correct errors in register book or certificate of title (<i>See, also, No. 47, 1897, s. 3, post</i>) (5.) To enter caveats ..	11, (1) 35, 186 (2) 186 (3) 194 (4) 194 (5) 194	85, 186 186 194 194	220 (1) (1), (3) (2) (4) (5)	11, (1) (2) (3) (4) (5)	175 (1) .. (5) .. (4)	33, cf. 180, 188
12	PART II.—BRINGING LANDS UNDER ACT. What lands subject to the Act ..	15	C. 19	7, 26	Act of 1863, ss. 3, 7.	10	18

COMPARATIVE TABLES OF STATUTES.—TABLE I.

New South Wales.	SUBJECT MATTER OF SECTION.	Queens-land.	Victoria.	South Australia.	Tasmania.	New Zealand.	Western Australia.
<i>Act of 1862.</i>							
13	{ What lands may be brought under Act	cf. 16	21	27	cf. Act of 1863, s. 4	cf. 17	20, cf. 39
14	{ What persons may apply to bring lands under Act (<i>see</i> Act of 1878, ss. 2, 3)	cf. 16	cf. 21	cf. 27	cf. do.	cf. 18	20
15	Applicant to deposit instruments of title and furnish abstract, if required	17	3	29	15	19	cf. 33
16	If applicant is original grantee without incumbrances, certificate of title issued at once	18	cf. 22	32	Act of 1863, s. 5	22	21
17	If applicant is not original grantee, but there are no incumbrances, advertisement necessary	19	cf. 23	32, 33	17	cf. 21	cf. 21, 22
18	Where title not complete, advertisement	20	cf. 23	32, 34	18	cf. 23	cf. 22
19	Notice of application may be given to parties interested by personal service or by advertisement	21	24, 25	35	19	24	cf. 23
20	If no caveat, lands brought under Act	22	27	36, 37	20	25	25
21	On failure of service of notice, Registrar-General shall report case to Commissioners	..	..	cf. 38	21	cf. 26	..
22	Parties interested may lodge caveat. (And <i>see</i> Act of 1878, s. 4)	23	32	39	22	137	30
23	If caveat received within time limited, proceedings stayed	24	33	40	23	141	31
24	Caveats lapse in three months, unless proceedings taken. (And <i>see</i> Act of 1878, s. 9)	25	cf. 34	cf. 45	24	145	cf. 32
25	Application may be withdrawn and title-deeds returned	29	36	41	25	27	34
26	Upon issue of certificate of title, title-deeds cancelled and retained by Registrar-General, unless they relate to other land	cf. 30	37	42	26	28	cf. 35
27	Provision for case of leasehold brought under the Act	..	<i>See</i> 41	..	..	..	..
28	How certificate of title issued, where applicant dies before issue. (And <i>see</i> Act of 1873, s. 3)	31	40	43	27	..	38
29	Percentage in the pound to be levied for assurance of title	41	42, 43	201	28	177, Act of 1889, s. 11	40
30	Assurance Fund to be invested in Government securities	42	200	cf. 202	29	194	..
31	Reversion expectant on lease not extinguished by bringing land under Act	47	cf. 76	46	30	cf. 177	cf. 70
32	Registrar-General to keep Register Book	32	50	47, 49	31	31	48
33	Every certificate of title to be in duplicate; one to be bound up in Register Book, the other delivered to person entitled	33	50	48	32	31	48, 59
34	Existing incumbrances to be notified in order of priority, and also the fact of issue to person under disability	33	50	77	32	59	..
35	Where fee simple or fee tail registered after registration of leasehold in same land	..	..	..	..	..	..
36	Certificate of title conclusive evidence of title	33	69	80	..	..	63
37	Grants, certificates, and other instruments, when deemed to be registered	34	54	50	34	cf. 65	52

35	Instruments to be in duplicate. (<i>Sed vide</i> Act of 1873, s. 2)	..	..	35 Act of 1877, s. 16.	cf. 55	C. 55	35	cf. 53
	Instruments take priority according to date of registration	..	..	Act of 1877, s. 12.		56		cf. 53
36	Instruments when registered deemed to be embodied in Register Book	..	..	{ 35	cf. 54	{ 57		cf. 52
37	Instruments when registered have effect of deed ..	..	..	67	cf. 92	261	36	cf. 85
38	General covenants to be implied in instruments ..	..	..	34	60	51	37	56
	What memorial consists of ..	..	..	cf. 45	cf. 61	cf. 52, 53	38	57
	Memorial to be recorded on duplicate grant or certificate or other instrument, except in certain cases, and to be receivable as evidence	..	..			
39	Instruments only effectual to pass estate or interest when registered	..	..	43	63	67	39	58
	Where two conflicting instruments presented for registration at the same time, that which is accompanied by the grant or certificate of title shall be registered	..	..	43	63	53	39	..
40	Estate of registered proprietor paramount, subject to certain exceptions	..	..	cf. 44	74	cf. 69	cf. 40	68
41	Instruments not to be registered unless in accordance with prescribed forms	..	..	..	..	54	41	..
42	Mode of transfer of land, or of any estate or interest in land, or of creation of easements (<i>See</i> Schedules D and E).	..	..	cf. 48	cf. 89	cf. 96	cf. 42	82
							76, Act of 1889, s. 3	
43	Easements, &c., to be registered by entry of memorial on grant or certificate of title of dominant tenement	..	..	51	96, 70 to 72, 75.	cf. 81	43	cf. 66
44	If estate of freehold in possession transferred, grant or certificate of title delivered up and cancelled as to all the land, or part transferred. (<i>Amended</i> by Act of 1873, s. 1).	..	..	cf. 49, Act of 1877, s. 17	cf. 98, 94	cf. 98, 99	cf. 44, Act of 1886, s. 12	cf. 86
45	Cancelled grant or certificate of title retained, and new one issued to purchaser	..	..	50	cf. 93	100	45	cf. 86
							78, Act of 1888, s. 4	
46	Transferee of land subject to mortgage or encumbrance to indemnify transferor	..	..	68	95	97	46	cf. 88
47	Transfer of mortgage encumbrance or lease ..	..	..	cf. 65	89	cf. 150, 151	cf. 63	cf. 82
48	Such transfer includes transfer of right to sue under the instrument	..	..	66	90	151	64	83
49	Mode of leasing lands for life or term exceeding three years	..	..	52	99	cf. 116	47	cf. 91
50	Lease may be surrendered by endorsement by lessee with consent of lessor	..	..	54	106	120, 123	48	98
51	Covenants by lessee to be implied in every lease ..	..	..	cf. 70, Act of 1877, s. 31.	100	cf. 124	49	cf. 92
52	Powers of lessor to be implied in every lease	..	..	71	101	125	50	93

COMPARATIVE TABLES OF STATUTES.—TABLE I.

New South Wales.	SUBJECT MATTER OF SECTIONS.	Queensland.	Victoria.	South Australia.	Tasmania.	New Zealand.	Western Australia.
<i>Act of 1862.</i>							
53	Registrar-General to note particulars of re-entry and cancel lease if delivered to him..	cf. 72	104, 112	126	cf. 51	cf. 92	cf. 96
54	Mode of mortgaging or encumbering lands	56	113	128, 129	52	cf. 98	105
55	Memorandum of mortgage or encumbrances is a security only, and not a transfer ..	60	{ 114	{ 132	{ 53	94	106
	Remedy in case of default	57	114 <i>et seq.</i>	133 <i>et seq.</i>	54	98	106
56	Power of sale and appropriation of proceeds	57	114 <i>et seq.</i>	133 <i>et seq.</i>	54	99 <i>et seq.</i>	108, 109
57	Registration of transfer executed by mortgagee or encumbrance vests land in purchaser ..	cf. 58	cf. 118	cf. 136	55	cf. 102	
58	In case of default, mortgagee or encumbrance may enter into possession by receiving rents, &c., or may distrain upon tenant, or may bring ejectment, or may foreclose ..	cf. 60	119	137 <i>et seq.</i>	cf. 56	cf. 96, 97, 111, Act of 1888, s. 7	110
							111
59	Power of mortgagee or encumbrance to distrain on tenant	cf. 61	cf. 120	cf. 138	cf. 57	cf. 97	112
60	Mortgagee or encumbrance of leasehold entering into possession liable to lessor	62	122	139	58	113	114
61	Mode of discharging mortgages and encumbrances by payment	63	131	143, 144	59	108	123
62	Discharge of annuity, &c., by death or other event	63	132	145	60	110	125
63	Mortgage money may be paid to Treasurer if mortgagee absent from colony, and mortgage discharged	64	133	146, 147	61	109	126
64	Covenants by mortgagor to be implied in every memorandum of mortgage	69	121	130	62	95	cf. 113
65	Abbreviated forms for expressing covenants by lessee or mortgagor to be as effectual as if such covenants were set forth at length	73	102, 123	265	65	157	cf. 94
66	No entry of trusts to be made in register	79	{ 57	{ cf. 162	{ 66	{ 122	55
67	Copy of instrument declaring trusts may be deposited. (Amended by Act of 1878, ss. 12, 14) ..	78	cf. 20, 66	163, 165	68	123, 125	..
	Effect of words "No survivorship"	cf. 80	cf. 20, 66	163, 164	68	113, 124	cf. 61
	If such words on transfer or other instrument, they shall be on certificate of title	cf. 81	66	cf. 165	69	126	..
68	Judge's order nullifies effect of such words	80	150	cf. 155, 156	70	cf. 152, 153	cf. 61, 62
69	Registration of power of attorney given by a registered proprietor	104					cf. 143
70	Registered proprietor of land may obtain registration abstract to deal with land when beyond the colony	105	C. 153	..	71	129, 130	..
71	Mode of procedure under registration abstract	106	154	..	72	131, 132	..
72	Proceedings upon delivery of registration abstract to Registrar-General	107	155	..	73	134	..
73	Procedure when registration abstract is lost, &c.	107	156	..	74	136	..
74	Revocation of power of attorney	108	150	157	75	154, Act of 1888, s. 11	cf. 143
75	PART V.—TRANSMISSIONS. Transmission by bankruptcy or insolvency Upon entry of appointment, assignee deemed proprietor, but subject to equities	{ 86	{ 236	{ 170, 171, 180	76	115-117	cf. 234

APPENDIX.

76	On disclaimer by trustee of insolvent lessee, the mortgagee of lease may be registered as transferee; otherwise lease deemed to be surrendered	..	105	cf. 178 (2) (3) (4)	77	119, 120	97
77	Marriage of female proprietor to be certified to Registrar-General ..	cf. 87	cf. 228	cf. 189	cf. 78	cf. 121	226
78	If land not held for separate use, husband registered as co-proprietor	..	..	190	..	165	..
79	Transmission of mortgage encumbrance or lease on death of registered proprietor	88	138	cf. 175	79	cf. 115,	132
79	Transmission of land on death of registered proprietor. Heir-at-law, devisee, &c., may apply for transmission. (See Act of 1878, ss. 6, 7, and 8)	89	cf. 225	<i>et seq.</i>	80	<i>et seq.</i>	cf. 219
80	Application to be advertised. and if no caveat lodged, applicant registered as proprietor. (Amended by Act of 1878, s. 6)	cf. 89	226	C. 175, <i>et seq.</i>	81	cf. 117	220
81	PART V.—GENERAL PROVISIONS.						
81	Caveat may be lodged to prevent any dealing with land under the Acts	98	144	191 (1)	82	138	137
82	Registrar-General to notify such caveat to justices, who may summon such caveator to show cause	99	145	191 (2)	83	143, 144	138
83	Caveats, with certain exceptions, lapse fourteen days after notice to caveator of intended dealing	C. Act of 1877, s. 39	145, cf. 23	cf. 191 (6)	83	146	..
83	Effect of such caveat ..	..	..	..	..	..	..
84	Action against person lodging caveat without reasonable cause	101	146	191 (3)	84	142	139
85	Registered proprietor may transfer estate to his wife (or, if married woman, to her husband), or to himself jointly with others, or may limit estates by remainder, &c., without uses or re-assignment	103	147	191 (10) (12)	85	147	cf. 140
85	Joint tenants or tenants in common to receive each one a distinct certificate	cf. 82	91	111	86	80	cf. 84
86	Registration of survivor of joint proprietors, or of remainderman, &c.	cf. 40	cf. 65	cf. 74	87 (<i>see</i> Act of 1886, s. 15)	cf. 54, 62	cf. 60
87	Remainderman or reversioner may be registered as such ..	cf. 38	cf. 229	188	88	cf. 80	cf. 227
88	Implied covenants and powers may be negative or modified	cf. 36	cf. 227	cf. 75	89	cf. 80	221
89	Implied covenant may be pleaded as if expressly made ..	76	..	262	Act of 1886, s. 16	158	..
89	Implied covenant to have same force and effect as if expressly made	74	137	263	..	159	131
89	Implied covenants to be deemed several and not joint	75	..	C. 264	90	158	..
90	Registrar-General may alter forms of instruments. (See s. 3 (c) <i>ante</i>)	74	187	220 (7)	92	C. 158	cf. 181,
90	Registrar-General may dispense with production of grant certificate or other instrument in certain cases	9	80	220 (9)	93	cf. 213	238
91	Writ of execution does not bind land until registered, and ceases to bind land unless transfer lodged within three months. (Amended by Act of 1878, s. 13)	cf. 95	139, 191	cf. 105,	93	cf. 38	74
92	Seal of corporation substituted for signature ..	91	106	270	C. 94	..	46, cf.
93		114	136	270	95	166	133, 185
93							130

COMPARATIVE TABLES OF STATUTES.—TABLE I.

New South Wales	SUBJECT MATTER OF SECTION.	Queens-land.	Victoria.	South Australia.	Tasmania.	New Zealand.	Western Australia.
<i>Act of 1862</i> 94	Attestation and proof of execution of instruments	115, Act of 1877, s. 5	152	267, 268	Act of 1886, s. 29	160, 161 169, Act of 1898, s. 12	145
95	Mode of proving execution of instruments	116	152	268	Act of 1886, s. 29	162, 163	85, 145
96	Acknowledgment of married women, how made	112	92	cf. 255, 257	..	C. 165	49, 71, cf. 85
97	Upon surrender of existing grants or certificates, proprietor may obtain a single certificate of title for all land included therein, and <i>vice versa</i>	94	cf. 77	78	99	74	cf. 49, 71
98	Provisional certificate of title issued where grant or certificate of title lost, &c.	117	81, 84 79	79 112	100 Act of 1886, s. 11	75 ..	75 73
99	Dealings may be registered before issue of Crown grant .. .. .	..	..	..	..	..	..
100	Registered proprietor subdividing land shall deposit map. Licensed surveyors	119	cf. 168	90, 101	103	cf. 170, et seq., Act of 1888, s. 8	cf. 15 166
101	Registrar-General may require map or plan to be deposited. (<i>See Act of 1873, s. 5</i>)	120	..	230 (8)	104	cf. 171, et seq.	166
102	Certified copy obtainable, and <i>prima facie</i> evidence of contents of instrument	122	241	..	105	cf. 39	239
103	Searching the register	121	241	65	106	40	146, 239
104	Applicant for registration or his solicitor to certify correctness of instrument	139	..	232, 273	107, Act of 1885, s. 30	168	cf. 192
	Penalty for false certificate .. .. .	..	..	..	..	..	..
105	Fees to be charged. (And see Act of 1873, s. 4)	140	197	22	108	211	191
106	Registrar-General to pay moneys into Treasury, and Treasurer to pay absent mortgagees and other parties entitled on a proper warrant	141	196	23	109	..	190
107	PART VII.—RIGHTS, REMEDIES, AND PROCEDURE. Applicant or proprietor may summon Registrar-General to show cause if dissatisfied (and see Act of 1878, s. 4)	cf. 27	209, 210	221, 222	110	191 et seq.	203
108	Registrar-General may, by direction of Commissioners, state special case for Supreme Court	cf. 14	cf. 199	cf. 223	111	..	cf. 193

				88 Act of 1877, s. 46 cf. 109	188	184	112	cf 195 <i>et seq.</i> 85	182
109	Vesting order of the Supreme Court to take effect when registered .. .. .	.. .. .	.. .. .	.. .. .	.. .. .	.. .. .	.. .. .	.. .. .	.. .. .
110	Action may be brought or defended by beneficiary in name of trustee, if indemnity given	.. .. .	.. .. .	.. .. .	231	185	113	229	134
111	Except in case of fraud, no person dealing with registered proprietor to be affected by notice ..	.. .. .	.. .. .	.. .. .	140	186, 187, and 71, 72	114	128	cf. 67
112	Certificate of Title to be conclusive proof of title of registered proprietor, in suit by him for specific performance	.. .. .	.. .. .	.. .. .	73	.. .. .	115	189	.. .. .
113	Mortgagee may apply to Registrar-General for an order for foreclosure	.. .. .	.. .. .	.. .. .	129	140	121	.. .. .	121
114	Order made by Registrar-General after advertisement offering land for sale, vests land in mortgagee	.. .. .	.. .. .	.. .. .	130	141, 142	122	.. .. .	122
115	No action of ejectment against registered proprietor, except in certain cases	.. .. .	.. .. .	.. .. .	205	C. 192, <i>et seq.</i> cf. 209	124	56	cf. 199
116	In case of ejectment of defendant who has made improvements, plaintiff shall either pay their value or recover damages for loss of land. Registrar to be made co-defendant where defendant entitled to indemnity from Assurance Fund, and only liable for actual loss sustained by defendant	.. .. .	.. .. .	.. .. .	.. .. .	.. .. .	.. .. .	cf. 186	.. .. .
117	Person deprived of land may, in certain cases, bring action against nominal defendant; in other cases against person blamable Except in cases of fraud or error, such person ceases to be liable after <i>bona fide</i> transfer for value Where remedy ineffective, damages recoverable from Assurance Fund .. .. .	.. .. .	.. .. .	.. .. .	cf. 126	cf. 203, <i>et seq.</i> 204	cf. 125	.. .. .	201
118	No action of ejectment, &c., for recovery of damages against <i>bona fide</i> purchaser for value	.. .. .	.. .. .	.. .. .	.. .. .	cf. 205	125	.. .. .	.. .. .
119	Action against Registrar-General for misfeasance, or by person deprived of land and barred of action for recovery	.. .. .	.. .. .	.. .. .	127	211, 212, 213	125, 127	cf. 178, <i>et seq.</i> 190	.. .. .
120	In every case of action against Registrar-General, notice of action to be given	.. .. .	.. .. .	.. .. .	126	206, 212 207	126	178, 179	202
121	Costs may be recovered in name of Registrar-General .. .. .	.. .. .	.. .. .	.. .. .	cf. 128	211	128	.. .. .	205
122	Damages and costs recovered to be paid out of Assurance Fund .. .. .	.. .. .	.. .. .	.. .. .	.. .. .	.. .. .	.. .. .	.. .. .	.. .. .
123	Limitations of actions .. .. .	.. .. .	.. .. .	.. .. .	cf. 128	215	cf. 128,	180, 181	209
124	Plaintiff in action for recovery, or for damages for deprivation of land, nonsuited if deprivation caused by bringing land under Act, and he wilfully omitted to lodge caveat	.. .. .	.. .. .	.. .. .	129	215	129	.. .. .	.. .. .
125	Registrar-General has remedy over to recoup Assurance Fund .. .. .	.. .. .	.. .. .	.. .. .	cf. 127,	216	cf. 128	cf. 179	210
126	Assurance Fund not liable for breach of trust .. .. .	.. .. .	.. .. .	.. .. .	128	.. .. .	130	.. .. .	.. .. .
127	Nor in certain other cases .. .. .	.. .. .	.. .. .	.. .. .	cf. 126,	217	C. 215	187	cf. 211,
128	Personal immunity of Registrar-General and officers .. .. .	.. .. .	.. .. .	.. .. .	127	.. .. .	130	188	219
129	Holder of instrument wrongly issued or retained may be summoned by Registrar-General. On his refusal to deliver instrument, judge may issue warrant	.. .. .	.. .. .	.. .. .	21	cf. 216	130	182 <i>et seq.</i>	195
130	Court may order delivery of instrument, and may commit holder to gaol on refusal, and, if necessary, Registrar-General may issue new instrument	.. .. .	.. .. .	.. .. .	cf. 127	201, 202	132	185	196
131		.. .. .	.. .. .	.. .. .	42	211	133	cf. 185	198
132		.. .. .	.. .. .	.. .. .	cf. 127	202	133	220	cf. 76
133		.. .. .	.. .. .	.. .. .	137	204	134	69, 70	cf. 77
134		.. .. .	.. .. .	.. .. .	cf. 130	82	136	71, 72	.. .. .
135		.. .. .	.. .. .	.. .. .	cf. 132	83	137	.. .. .	.. .. .

COMPARATIVE TABLES OF STATUTES.—TABLE I.

New South Wales	SUBJECT MATTER OF SECTION.	Queens-land.	Victoria.	South Australia.	Tasmania.	New Zealand.	Western Australia.
<i>Act of 1862.</i>							
128	Upon recovery of land, &c., Court may order cancellation of instrument or entry and substitution of new one	124	206	cf. 64	138	78	200
129	Oath of sworn valuator (<i>see s. 3 ante</i>)	Act of 1877, s. 7	14	..	..	210	14
130	Certain fraudulent acts to be misdemeanours	cf. 103	220	cf. 233	139	200	cf. 214
131	Conviction not to affect civil remedy	cf. 142	223	240	142	204	217
132	Forgery, &c., to be felony	cf. 142	221	cf. 229	140	cf. 201	cf. 215
133	Punishment of felony and perjury	cf. 142	221	231	141	203	216
134	Actions and appeals governed by rules of Supreme Court	..	218	224	143	198, 199	212
135	Power to make new rules	..	224	C. 235 <i>et seq.</i>	cf. 144	216	218
136	Offences prosecuted and penalties recoverable in name of Attorney-General	cf. 143	..	..	..	..	..
<i>Act of 1873</i>							
1	Commencement of Act, 1st Jan., 1863	..	..	..	..	..	..
	Transfer by endorsement on grant or certificate of title where all the land transferred	Act of 1877, s. 17	94	99	Act of 1886, s. 12	77	cf. 86, 87
2	Transfer need not be in duplicate	Act of 1877, s. 16	55	<i>See</i> 55	Act of 1886, s. 33	<i>See</i> 33	..
3	Crown grant in name of deceased person to have same effect as certificate of title (adding to Principal Act, s. 26)	48 Vic., No. 9, s. 1	<i>See</i> note in 'Beckett's Tr. Land St., 2nd Ed., p. 73	..	Act of 1886, s. 10	..	..
4	Fees for long certificates (amending Principal Act, s. 105)	..	..	..	..	..	191
5	Plans deposited to be in duplicate if required (<i>see</i> Principal Act, s. 101)	..	..	..	..	..	..
6	Act to be read with Principal Act	..	..	..	..	..	..
7	Short Title	..	..	..	..	..	..
<i>Act of 1878</i>							
1	Commencement of Act, Short Title, &c.	..	..	..	..	..	..
2	What persons may apply to bring lands under Act (adding to Principal Act, s. 13)	..	..	..	..	..	cf. 20

	When vendor of land to join in application or consent thereto	.. .. .	C. 28	..	..	cf. 29
3	When caveat lodged against application, applicant may state case for Court, and issues may be tried by jury; costs to be borne by party finally unsuccessful (amending Principal Act, ss. 21, 23)	.. .. .	..	..	..	..
4	On application to bring land under Act, Court may order any person retaining deeds to produce them	.. .. .	..	..	..	..
5	What persons may apply for transmission on death of registered proprietor of land—procedure thereon (adding to Principal Act, s. 79, and amending s. 80)	.. .. .	..	..	..	..
6	Dispensing with certificate of death in certain cases of applications for transmissions, and with statement of certain estates and interests (amending Principal Act, ss. 79 and 80)	.. .. .	..	..	..	..
7	Registration on transmission by endorsement	.. .. .	..	..	..	..
8	Where caveat lodged against application to bring land under Act, if caveator neglects to use diligence, Registrar-General may proceed with application (amending Principal Act, s. 23)	.. .. .	..	..	..	..
9	Where application to bring land under Act, special case may be stated if objection to title raised by the examiners	.. .. .	..	..	..	..
10	No title can be acquired to land in derogation of that of registered proprietor by virtue of Statute of Limitations	.. .. .	..	..	..	..
11	Where instrument declaring trust deposited, Registrar-General must lodge caveat to protect beneficiary. Caveat removable under s. 82 (adding to Principal Act, s. 66 and s. 82)	.. .. .	..	..	..	..
12	Writ of execution shall not bind lands unless copy of writ served on Registrar-General within six months from date (amending Principal Act, s. 92)	.. .. .	..	..	..	..
13	Crown grant registrable, although trusts declared in it (<i>see</i> Principal Act, s. 66)	.. .. .	..	..	..	..
14	Short Title	.. .. .	..	..	..	..
Act of 1894	Repeal of s. 6 of Principal Act and the whole of the "Land Titles Commissioners' Fees Act of 1871," and abolition of office of Commissioners	.. .. .	..	..	..	..
1	Registrar-General to perform duties of Commissioner in accordance with provisions of Principal Act and the Amending Act of 1878	.. .. .	..	..	..	..
2	Abolition of Commissioners' Fees	.. .. .	..	..	..	..
3	Exchange or surrender made by trustee or executor	.. .. .	..	..	..	..
4	Endorsement on grant or certificate of title, and in register book where land under the Act becomes Crown lands	.. .. .	..	..	..	..
Act of 1897	Registrar may correct errors in Crown grant in the same way as in certificate of title under s. 11 of Principal Act	.. .. .	..	..	..	..
1	Short Title	.. .. .	..	..	..	..
2		.. .. .	..	..	..	..
3		.. .. .	..	..	..	..
4		.. .. .	..	..	..	..

COMPARATIVE TABLES OF STATUTES.—TABLE II.

New Zealand	SUBJECT MATTER OF SECTION.		Queens-land.	New South Wales.	Victoria.	South Australia.	Tasmania.	Western Australia.
<i>Act of 1865.</i>								
1	Short Title		3	3	4	3	3	4
2	Interpretation—Definitions—N.B.—Mortgage includes "encumbrance"	..						
3	Existing Registration districts under "Land Transfer Act, 1870" continued under this Act.	..						
4	Governor-in-Council may alter or abolish districts	..						
5	Officers created under repealed Acts continued under this Act	..						
6	Governor may appoint deputy officers	..						
7	Officers may be held conjointly and concurrently	..						
8	Barristers or solicitors only to be appointed to offices of Registrar-General, District Land Registrar, or Examiner of Titles	..						
9	Officers to be subject to Civil Service Act	..	8	7	10	21	8, 91	10
10	Registrar's seal of office	..	15	12	C. 19	7, 26	Act of 1863, ss. 3, 7	C. 18
11	What lands subject to the Act..	..						
12	Special provision as to Native Land Act..	..						
13	After commencement of Act, no Crown grant issued, but certificate of title in lieu thereof, on Governor's warrant	..						
14	Particulars to be specified in warrant for issue of certificate of title	..						
15	Certificate of title may be issued to person entitled thereto at time of issue of warrant	..						
16	Every such certificate of title as aforesaid to issue subject to existing encumbrances	..						
17	Warrant not necessary in certain cases	..						
18	BRINGING LANDS UNDER THE ACT.	..						
19	What lands may be brought under the Act	..	16	13	21	27	Act of 1863, 4	20
20	What persons may apply to bring lands under Act	..	cf. 16	cf. 13 and Act of 1878, ss. 2, 3	21	cf. 27	cf. Act of 1863, s. 4	cf. 20
21	Applicant to deposit instruments of title, and furnish abstract if required	..	17	14	..	29	15	33
22	Every application to be reported on by the Examiner	..	..	..	..	..	..	..
23	If all necessary parties concur, application to be advertised	..	cf. 19	cf. 16	cf. 23	cf. 32, 33	cf. 17	cf. 22
24	If applicant is original grantee without encumbrances, certificate or title issued at once	..	18	15	cf. 22	32	Act of 1863, s. 5	cf. 21
25	If parties interested do not concur, or if title incomplete, advertisement	..	cf. 20	cf. 17	cf. 23	cf. 32, 34	cf. 18	cf. 22
26	Notice to be given to certain parties by registered letter, and to be posted at registry	..	cf. 21	cf. 18	cf. 25, 24	cf. 35	cf. 19	cf. 23
27	If no caveat, lands brought under Act	..	22	19	27	86, 87	20	25

26	In case of failure to serve notice, time for lodging caveat may be extended .. .. .	..	cf. 20	..	cf. 38	cf. 21	..
27	Application may be withdrawn and title deeds returned	29	24	36	41	25	34
28	Upon issue of certificate of title, title deeds cancelled and retained by Registrar, unless they relate to other land	30	25	cf. 37	42	26	cf. 35
29	Reversion expectant on lease not extinguished by bringing land under Act	47	29	cf. 76	46	30	cf. 70
30	Where application is pending to bring land under Act, registration of Crown grant under Deeds Registration Act not necessary .. .. .	..	..	..	..	..	..
31	REGISTRATION. Each District Registrar to keep Register Book	32, Act of 1887, s. 6	cf. 30, 31	cf. 140	cf. 47 to 49	cf. 31, 32	cf. 48
32	Grants, certificates, and other instruments, when deemed to be registered	34	34	54	50	34	48, 52
33	Grants and other instruments, with certain exceptions, to be attested and in duplicate	33	31	50	48, 49	32	48, 53
	One duplicate to be filed, the other delivered to the person entitled	35	35	56	C. 55	35	cf. 53
	Instruments take priority according to date of registration	Act of 1877, s. 12	35	cf. 55	56	35	53
34	Instruments when registered deemed to be embodied in Register, and to have effect of a deed	35	35	cf. 54, 92	57	35	..
35	What memorial consists of	34	37	60	51	37	56
	Memorial to be recorded on duplicate grant, or certificate, or other instrument (except in certain cases), and to be receivable as evidence	cf. 45	38	cf. 61	cf. 52, 53	38	cf. 57
36	Instruments only effectual to pass estate or interest when registered	43	39	63	67	39	58
	Where two conflicting instruments presented for registration, that which is accompanied by the grant or certificate of title shall be registered	43	39	63	58	39	58
37	Informal instruments not to be registered .. .. .	..	41	..	54	41	..
38	Registrar may dispense with production of duplicate grant certificate or other instrument in certain cases	cf. 95	cf. 91	cf. 80	cf. 220 (9)	cf. 93	cf. 74
39	Certified copy obtainable, and to be evidence of contents of instrument .. .. .	..	..	..	..	..	..
40	Searching the register	cf. 123	cf. 102	cf. 241	..	cf. 105	cf. 239
41	Instrument must be stamped before registration	121	108	241	65	106	239
42	PROVISIONAL REGISTRATION. Until folium of Register duly constituted, provisional register to be used .. .. .	..	..	..	..	..	..
43	When Register finally constituted, provisional register to be closed and entries to be transferred to Register .. .. .	..	..	..	..	..	..
44	While land remains on provisional register no certificate of title other than certificate of title in lieu of grant to be issued, but entries in provisional register to be evidence of dealings .. .. .	..	..	..	..	..	..
45	Provisions of the Act apply, with certain exceptions, to lands provisionally registered .. .. .	..	..	..	..	..	..
46	After transfer of land to the register, no dealing registered until certain fees paid .. .. .	..	..	..	..	..	..
47	LOST TITLE DEEDS. Where instrument executed by registered proprietor lost before registration, person claiming under instrument may have claim investigated by Supreme Court .. .. .	..	..	..	..	..	..
48	Claimant may have his interest declared and registered .. .. .	..	..	..	..	..	..

COMPARATIVE TABLES OF STATUTES.—TABLE II.

New Z'land.	SUBJECT MATTER OF SECTION.	Queens- land.	New South Wales.	Victoria.	South Australia.	Tasmania.	Western Australia.
<i>Act of 1885.</i> 49	Court to be guided by real justice OUTSTANDING INTERESTS.						
50	Encumbrances existing when land brought under Act to be notified in register in order of priority	33	31	50	..	32	48
51	Certain interests registered under <i>The Deeds Registration Act, 1868</i> , shall be deemed existing encumbrances						
52	Leases under <i>The West Coast Settlement Reserves Act, 1881</i> , may be registered						
53	Assurance Fund not liable for loss of interest under any instrument registrable under law relating to registration of deeds, unless instrument actually so registered, or notified to the Registrar, under this Act						
	REGISTERED PROPRIETORS.						
54	Joint proprietors to take as joint tenants	40	86	65	74	87	cf. 60
55	Estate of registered proprietor paramount, subject to certain exceptions	cf. 44	cf. 40	cf. 74	cf. 69	cf. 40	cf. 68
56	No action of ejectment against registered proprietor, except in certain cases	cf. 123	cf. 115	cf. 205	C. 192, <i>et seq.</i>	cf. 124	cf. 199
57	No title acquired to land under Act by possession or user adverse to registered proprietor	..	cf. Act of 1878, s. 11	C. 74	251	..	C. 68
	CERTIFICATE OF TITLE.						
58	Registered proprietor of a freehold in possession entitled to a certificate of title	..	..	cf. 64	cf. 73	..	cf. 59
59	Existing encumbrances to be noted upon certificate of title when issued	33	31	50	77	32	..
60	Certificate of title to contain particulars of minority or other disability of holder	33	31	64	77	32	59
61	Certificate of title, how to be dated	..	..	..	..	..	..
62	Certificate of title issued in lieu of cancelled certificate of title may be ante-dated	..	..	..	..	..	..
63	Easements, &c., to be registered by entry of memorial on grant or certificate of title of dominant tenement	51	43	96, 70, 72, 75	cf. 81	43	cf. 66
64	Tenants in common entitled to separate certificates	40	cf. 86	cf. 65	cf. 74	cf. Act of 1886, s. 15	cf. 60
65	Issue of certificate of title may be withheld for fourteen days in certain cases	cf. 31	cf. 26	cf. 40	cf. 43	cf. 27	cf. 38
66	Certificate of title not to be void if issued in name of deceased person	cf. 33	cf. 33	cf. 69	cf. 80	cf. 33	cf. 63
67	Duplicate certificate of title conclusive evidence of its contents, unless contrary proved from the register	..	..	..	..	..	..
68	Certificate of title not defeasible on account of informality in bringing land under Act	33	33	69	cf. 80	33	cf. 63
69	Certificate of title void as against person rightfully in adverse possession when land brought under Act	..	..	..	69 (6)	135	..
70	Power of Registrar to correct errors	11 (4)	11 (4)	194	220 (4)	11 (4)	188

69	Holder of instrument wrongly issued, &c., may be required by Registrar to deliver up same	130	126	82	60	186	cf. 76
70	In default, holder may be summoned to Supreme Court	130	126	82	61	186	cf. 76
71	Holder refusing to deliver up instrument may be committed to prison	..	127	83	62	187	cf. 77
72	Registrar shall issue new instrument if necessary	182	127	83	cf. 63	187	cf. 77
73	Upon recovery of land, &c., Court may order cancellation of instrument or entry, and substitution of new one	124	128	206	cf. 64	188	200
74	Upon surrender of existing grants or certificates, proprietor may obtain a single certificate of title for all land included therein, and <i>vice versa</i>	94	97	cf. 77	78	99	cf. 71
75	Provisional certificate of title issued where grant or certificate of title lost	117	98	81, 84	79	100	cf. 75
76	Mode of transfer of land, or any estate or interest therein, and of creation of easement. (And see Act of 1889, s. 3, <i>post</i>)	cf. 48	42	cf. 89, 96	96	cf. 42	cf. 82
77	Transfer by endorsement on grant or certificate of title where all land transferred	Act of 1877, s. 17, cf. 50	Act of 1877, s. 1, cf. 45	94	99	Act of 1886, s. 12, cf. 45, of 1886, s. 13, cf. 14	cf. 87
78	Grant or certificate of title to be cancelled where part only of land transferred. (And see Act of 1886, s. 4, <i>post</i>)	..	..	C. 93	cf. 100	cf. 45, of 1886, s. 13, cf. 14	cf. 86
79	New certificates of title to be issued for portion transferred and for balance..	..	..	93	..	cf. 14	86
80	Registered proprietor may transfer estate to his wife (or, if married woman, to her husband), or to himself jointly with others, or may limit estates by remainder, &c.	cf. 82	85	91	111	86	cf. 84, 221
	Certificate to issue for estate in possession only	cf. 36, 38	cf. 88, 87	cf. 227	cf. 75, 188	cf. 88, 89	cf. 221
81	Transferee of land subject to mortgage to indemnify transferor	68	46	95	97	48	cf. 88
82	Mortgage or lease may be transferred by memorandum of transfer, or by instrument in form G.	65	cf. 47	cf. 89	150	63	cf. 82
83	Transferee takes rights and liabilities of transferor, including right to sue under the instrument	65, 66	47, 48	89, 90	151	63, 64	83
84	Implied covenants by transferee on transfer of lease	..	..	103	152	..	95
85	Vesting order of Supreme Court to take effect when registered	83	109	188	184	112	182
86	Mode of leasing lands for life, or term not less than three years	cf. 52	cf. 49	cf. 99	cf. 116, 117	cf. 47	cf. 91
87	Lease may contain option to purchase	53	49	..	117	47	..
88	Lease not binding on mortgagee without consent	52	49	99	118	47	91
89	Surrender of lease by endorsement by lessee with concurrence of lessor	54	50	106	120, 123	48	98
90	Covenants by lessee to be implied in every lease	..	cf. 51	cf. 100	cf. 124	cf. 49	cf. 92
91	Powers of lessor to be implied in every lease	71	52	101	125	50	93
92	Registrar to note particulars of re-entry under power or by process of law. Notice or advertisement when necessary	cf. 72	cf. 53	cf. 104, 112	cf. 126	cf. 51	cf. 96
93	Mode of mortgaging lands N.B.—“Mortgage” includes “charge” or “encumbrance” (see s. 2, <i>ante</i>)	56	54	113	128, 129	52	105

COMPARATIVE TABLES OF STATUTES.—TABLE II.

New Zealand.	SUBJECT MATTER OF SECTION.	Queensland.	New South Wales.	Victoria.	South Australia.	Tasmania.	Western Australia.
<i>Act of 1885.</i> 94	Mortgage is a security only, and not a transfer Sub-mortgage is transfer of mortgage	60 ..	55 ..	114, <i>see</i> note in a'Beckett's Tr. L. St. 2nd Ed., to s 83 cf. 119	132 ..	53 ..	106 ..
95	Covenants by mortgagor to be implied in every mortgage ..	69	64	121	130	62	113
96	Mortgagee on default may receive rents, or may distrain on mortgagor in possession, or may bring an action for possession. (<i>Repealed by Act of 1888, s. 7, post</i>)	cf. 60	cf. 58	cf. 119	cf. 137	cf. 56	cf. 111
97	Mortgagee may distrain on tenant to the amount of his rent ..	cf. 61	cf. 59	cf. 120	cf. 138	cf. 57	112
98	Mortgagee may give notice of intention to sell ..	57	55	114	132	53	106
99	Power of sale, how exercised ..	57	56	116	133	54	108
100	Receipt of mortgage sufficient discharge ..	57	56	cf. 116	134	54	..
101	Application of proceeds of sale ..	57	56	117	135	54	109
102	Registration of proceeds of sale ..	58	57	118	136	55	110
103	Registration of transfer executed by mortgagor vests land in purchaser ..	..	..	..	..	..	..
104	Mortgagee may sell through Registrar of Supreme Court ..	..	..	..	..	..	..
105	Such Registrar to fix time and place and conduct sale ..	..	..	..	..	..	..
106	Mortgagee may become purchaser at such sale ..	..	..	..	..	..	..
107	Vendor to pay fee to such Registrar ..	..	..	..	..	..	..
108	Upon registration of transfer to mortgagor or his nominee, land vests ..	..	..	..	..	..	..
109	Mode of discharging mortgage by agreement ..	63	61	121	143, 144	59	123
110	Mortgage money paid to Treasurer if mortgagor absent from colony ..	64	63	133	146, 147	61	126
111	Discharge of annuity ("mortgage") by death or other event ..	63	62	132	145	60	125
112	Mortgagee to have remedies given by law to lessor for recovery of possession ..	..	..	..	..	..	..
113	Mortgagee of lease not in possession may prevent recovery of possession by lessor or mortgagor of freehold, if he pay all rents, &c., due ..	..	..	..	..	..	..
114	Mortgagee of lease in possession liable to lessor for rent, &c. ..	62	60	122	139	58	cf. 95, 114
115	Mortgagee entitled to grant or certificate of title, unless same is deposited with Registrar for safe custody ..	..	..	134	..	..	..
116	TRANSMISSION. Person claiming any transmission may make application. [<i>See</i> definition of "transmission" (s. 2, ante)] Particulars to be stated in application ..	86, 88, 89 do.	75, 78, 79 do.	138, 225, 236 do.	cf. 170 to 180 do.	cf. 76 to 80 do.	cf. 132, 219, 234 cf. 132, 219, 234

		do.	do.	do.	do.	do.	do.	do.	cf. 219, 220, 139, 234
117	Registration of transmission. Prior advertisement necessary in case of will or intestacy ..	..						
118	Registrar may enter caveat to protect beneficiaries upon registration of transmission under will or settlement								97
119	On disclaimer by trustee of insolvent lessee, the mortgagee of lease may be registered as transferee thereof	..	76	105	173 (2) 173 (3) 173 (4)	77			97
120	Otherwise disclaimer, when registered, operates as a surrender	..							226
121	Husband, upon proof of marriage, may be registered as joint proprietor of wife's estate. (As to dealings by the wife, <i>see s. 165, post</i>)	87	77	228	189, 190	78			
122	<i>Taunsa.</i> No entry of trusts to be made in register, but instrument declaring trusts or copy may be deposited	79, 78	66	57	162	66			55
123	Upon transfer to joint proprietors, transferor may insert the words "No survivorship"	..							cf. 61
124	Such words to be entered in register and duplicate	cf. 80	67	20, 66	163	68			
125	Likewise upon application of joint proprietors ..	..							cf. 61
126	Effect of such entry—no dealing by survivors, except by order of Court	..							cf. 61
127	Procedure for that purpose ..	cf. 80	67	66	164	68			cf. 61, 62
128	Registered proprietor may make Registrar a trustee Action may be brought by beneficiary in name of trustee, if indemnity given	..	110	113	166, 167	67			229
129	REGISTRATION ABSTRACT. Registered proprietor of land may obtain registration abstract to deal with land when beyond colony	84	110	113	185	113			
130	After issue thereof and until cancellation, no entry to be made in the register	105	70	153	..	71			..
131	Mode of procedure under registration abstract ..	105	70	153	..	71			..
132	Entry on abstract to have effect of entry on register	106	71	154	..	72			..
133	Certificate endorsed on instrument of entry on abstract to be evidence	106	71	154	..	72			..
134	Proceedings upon return of abstract ..	107 (9)	72	155	..	73			..
135	Where there has been a transfer of the freehold by means of the abstract, the grant or certificate of title shall be delivered up to the Registrar	107 (4)	72	155	..	73			..
136	Procedure where abstract is lost, &c. ..	107 (7)	73	156	..	74			..
137	CAVEAT. Parties interested may lodge caveat against application to bring land under the Act	23	21	32	22	22			30
138	Caveat may be lodged to prevent dealing with land under the Act ..	98	81	144	191 (1)	82			137
139	Particulars to be stated in every caveat ..	23, 100	21, 81	32, 144	39,	22, 82			137
140	Service of notice on caveator ..	100	81	20	cf. 191 (1)	82			..
141	Effect of caveat against application to bring land under Act	24	22	33	191 (1)	23			31
142	Effect of caveat against dealings ..	101	83	146	191 (3)	84			139
143	Notice of caveat to be given to parties affected ..	99	82	145	191 (2)	83			138
144	Applicant or proprietor may summon caveator to show cause	99	82	145	191 (4)	83			138
145	Lapse of caveat against application ..	25	23	34	cf. 45	24			cf. 32

COMPARATIVE TABLES OF STATUTES.—TABLE II.

New Zealand.	SUBJECT MATTER OF SECTION.	Queensland.	New South Wales.	Victoria.	South Australia.	Tasmania.	Western Australia.
<i>Act of 1885.</i> 146	Lapse of caveat against dealings	C. Act of 1877, s. 39	82	145	cf. 196 (6)	83	138
147	Action against person lodging any caveat without reasonable cause	103	84	cf. 147	191 (10)	85	140
148	Caveat may be withdrawn	cf. 24, 102	81	cf. 144	191 (8)	82	137
149	Lapsed caveat not to be re-lodged, except by order of Court	cf. Act of 1877, s. 40	..	34, 145	45, 191 (11)	..	cf. 32, 138
150	POWERS OF ATTORNEY. Validation of dealings under powers of attorney executed before land brought under repealed Acts	..	..	151	..	..	144
151	Lands may be dealt with under powers of attorney, though subsequently brought under Act	104	69	150	155	70	cf. 143
152	Registered proprietor of land may appoint attorney to deal therewith	cf. 104	cf. 69	150	cf. 156	cf. 70	cf. 143
153	Power of attorney or copy to be deposited with Registrar, but not registered ..	cf. 108	cf. 74	150	157	cf. 75	cf. 143
154	Power of attorney may be revoked by notice to the Registrar. (And see Act of 1888, s. 11 <i>post</i>)	..	..	..	..	..	..
155	Power of attorney need not be under seal	..	..	..	..	..	..
156	COVENANTS IMPLIED IN INSTRUMENTS. General covenants to be implied in instruments	67	36	..	261	36	..
157	Abbreviated forms of covenants	73	65	cf. 102, 123	265	65	cf. 94
158	Implied covenants and powers may be negatived or modified	76	89	137	262	90	131
	Implied covenant to have same effect as if expressly made	75	89	137	263	90	131
	Implied covenant to be deemed joint and several ..	C. 74	C. 89	137	264	C. 90	131
159	Implied covenant may be pleaded as if expressly made ..	74	89	137	263	90	131
	EXECUTION OF INSTRUMENTS. Instruments to be signed and attested, and to have effect of a deed. (<i>See</i> s. 33, <i>ante</i>)	115	94	92, 152	267	Act of 1886, s. 29	cf. 85, 145
161	Proof of execution of instruments	115, Act of 1877, s. 5	94	152	267	Act of 1886, s. 29	145
162	Mode of proving execution by attesting witness	116	95	152	267, 268	do.	cf. 145
163	Mode of proving execution by party executing	116	95	152	..	do.	cf. 145

164	Execution by aboriginal natives	..	..	..	..	C. 112	C. 96	C. 92	C. 255 cf. 257 270	..	C. 85, 226 130
165	Married woman deemed <i>feme sole</i> for purpose of dealing	..	..	..	..	114	93	136	95	..	..
166	Corporation, instead of signing instrument, may seal same, or sign by attorney	..	..	..	..	139	104	..	232, 273	107, Act of 1885, s. 30	..
167	Registered instruments presumed to have been duly executed	..	..	..	..		
168	Applicant for registration, or his land broker or solicitor, to certify correctness of instrument	..	..	..	..		
	Penalty for false certificate	..	..	..	..		
VERIFICATION OF INSTRUMENTS.											
169	Instruments executed or acknowledged out of the colony when receivable in evidence. (And see Act of 1888, s. 12, <i>post</i>)	..	..	..	..		
SURVEYS.											
170	Surveyor-General to make regulations for surveys	..	..	..	..	118 (cf. 119, 120, 49 Vic., No. 15, ss. 7, 8)	100	16, 172	243	See 103	15
171	Surveyors to be licensed. (And see Act of 1888, s. 8, <i>post</i>)	..	..	..	..		
171	Applicant or proprietor may be required to deposit map or plan	..	..	..	..		
172	Until map or plan deposited, no registration of dealings, &c.	..	..	..	..		
173	Deposit not to operate as dedication of roads	..	..	..	..		
174	Land taken for roads to be defined on register	..	..	..	..		
ADDITIONAL POWERS OF REGISTRAR.											
175	Additional powers of Registrar	..	..	..	..	11 (1)	11 (1)	cf. 85	220 (1)	11 (1)	cf. 33, 180
	(1) To require production of documents affecting any application or dealing	..	..	..	..		
	(2) To require production of instruments for endorsement	..	..	..	..		
	(3) To require production of instrument for cancellation	..	..	..	..		
	(4) To enter caveats	..	..	..	..	11 (5)	11 (5)	194	220 (5)	11 (5)	188
	(5) To administer oaths	..	..	..	..	11 (3)	11 (3)	194	220 (2)	11 (3)	188
176	Penalty for not producing instruments when required by Registrar	..	..	..	..		
ASSURANCE FUND.											
177	Percentage in the pound to be levied for assurance of title. (Amended by s. 11 of Act of 1889, <i>post</i>)	..	..	..	..	41	27	42	201	28	cf. 40, 194
178	Person sustaining loss through misfeasance, &c., of Registrar, or deprived of land and barred from action for recovery, may bring action against Registrar for damages	..	..	..	..	cf. 128 127	cf. 119, 117	cf. 211, 212, 213	cf. 238, 206	cf. 128, 127	cf. 201, 205
179	Treasurer to pay damages and costs out of Assurance Fund	..	..	..	..	127, 128	121	216	cf. 213	127, 128	205, 210
180	Notice of every action to be served on Registrar General and Attorney-General	..	..	..	..	cf. 128	120	215, 214	208, 210	128	208, 209
181	Claim may be admitted by them	..	..	..	..		
181	Liability of plaintiff for costs	..	..	..	..	cf. 129	120	215	..	129	209
182	Registrar-General has remedy over to recoup Assurance Fund	..	..	..	..	127	123	201, 202	217 <i>et seq.</i>	132	195
183	Judgment may be signed against absconder in his absence..	..	..	..	..	..	..	..	..	..	195

COMPARATIVE TABLES OF STATUTES.—TABLE II.

New Zealand	SUBJECT MATTER OF SECTION.	Queens-land.	New South Wales.	Victoria.	South Australia.	Tasmania.	Western Australia.
<i>Act of 1865.</i>							
184	Or liability may be enforced when he returns to the jurisdiction ..	..	..	202	..	..	195
185	Assurance Fund not liable for breach of trust ..	42	124	202	211	183	196
	Nor in certain other cases ..	..	124	202	cf. 212, 214	183	..
186	Value of land at time of deprivation to be measure of damages ..	..	..	207, 211	cf. 209	..	cf. 201, 205
187	Limitation of actions against Registrar-General ..	cf. 127	cf. 122	cf. 217	C. 215	cf. 180	cf. 211
188	Plaintiff in action against Registrar-General, or for recovery of land, nonsuited if loss caused by bringing of land under Act, and he wilfully, &c., omitted to lodge caveat	21	122	217	cf. 216	130	211
	PROTECTION OF PURCHASERS.						
189	Except in case of fraud, purchaser, &c., from registered proprietor not to be affected by notice	cf. 109	111	140	186, 187	114	184
190	<i>Bona fide</i> purchaser, &c., for value not liable to action for recovery of land or for damages ..	126	116	208	207	126	202
	APPEAL.						
191	Person aggrieved by decision of District Registrar may require him to give written grounds ..	cf. 27	107	209	221	110	208
192	And summon him to uphold them before the Supreme Court ..	cf. 27	107	209	222	110	203
193	Matter to be heard by way of motion: issue to be tried, if necessary ..	cf. 27	107, cf. Act of 1878, s. 4	209	222	110	cf. 203
194	Costs to be paid by person aggrieved, unless Court otherwise orders	cf. 27	107	209, 210	222	110	204
195	Registrar-General to decide matters in dispute between District Registrar and Examiner ..						
196	Person aggrieved may, at his option, appeal in first instance from Registrar to Registrar-General						
197	Registrar-General may submit any question by special case to Court of Appeal	cf. 14	cf. 108	cf. 199	cf. 223	cf. 111	cf. 193
198	Ordinary Rules of Court and Appeal Rules to apply ..		134	218	224	143	212
199	Judges may make special rules for matters under the Act..		134	218	224	143	212
	OFFENCES.						
200	Misdemeanours under the Act ..	cf. 10	130	220	cf. 233	189	cf. 214
201	Felonies under the Act ..	cf. 142	132	221	cf. 229	140	cf. 215
202	Perjuries under the Act ..	142	132	cf. 220	230	140	..
203	Punishments of felony and perjury ..	cf. 143	133	cf. 222	231	141	cf. 216
204	Conviction not to affect civil remedy ..	cf. 142	131	223	240	142	217
	LAND BROKERS AND VALUERS.						
205	Registrar-General to license persons as land brokers to transact business under Act	..	..	..	271	..	..
206	Bond to be given by licensee ..	..	..	..	272	..	..
207	License may be revoked ..	..	..	..	271	..	..
208	Penalty for transacting, or offering to transact, business without license ..	..	..	..	..	..	..

[illegible]

COMPARATIVE TABLES OF STATUTES.—TABLE II.

New Zealand.	SUBJECT MATTER OF SECTION.	Queens- land.	New South Wales.	Victoria.	South Australia.	Tasmania.	Western Australia.
<i>Act of</i> 1888.	Addition to s. 154 of Principal Act. Power of attorney not revocable by bankruptcy or marriage of grantee						
11	Addition to s. 169 (2) of Principal Act. As to attestation of instruments by British Consul in places where no affidavit or declaration can legally be made						
12							
<i>Act of</i> 1889.							
1	Short Title						
2	Interpretation						
3	Registrar may dispense with description of land, &c., in cases under s. 76 of Principal Act ..						
4	Validation of instruments executed by a person before he became registered proprietor ..						
5	Where certificate of title issued in lieu of Crown grant, land deemed subject to Acts from date of issue of Governor's warrant for certificate of title						
6	No right to public road or reserve acquired by its authorised inclusion in registered instrument						
7	New section substituted for s. 219 of Principal Act						
8	Probate or administration granted in British dominions since <i>Administration Act, 1879</i> , affects real estate in colony when re-sealed						
9	Probate of will of aboriginal native to take effect on his real estate without succession order ..						
10	Where transfer registered without production of certificate of title, under s. 45 of <i>The Rating Act, 1882</i> , Registrar may issue new certificate						
11	Amendment of s. 177 of Principal Act						

COMPARATIVE TABLES OF STATUTES.—TABLE III.

Queens-land.	SUBJECT MATTER OF SECTION.				New South Wales.	Victoria.	South Australia.	Tasmania.	New Zealand.	Western Australia.
Act of 1861.										
1	Laws inconsistent not to apply to lands under Act	..	..	..	1	3	6	1	..	3
2	Short Title ..	..	..	..	3	4	3	{	2	4
3	Interpretation (added to by Act of 1877, s. 3.)		88	76		3	212	81
					240		cf. 275		215	238
4	Functions of officers ..	..	..	..	..	..	..	cf. 4	..	7
5	Appointment of Registrar	..	..	..	10	9, 10	21	7	9	13, 14
6	Oaths of office	..	..	..	7	10	21	8, 91	9	..
7	Documents purporting to be issued sealed or signed by Registrar to be received as evidence	..	..	..	7	187	220 (7)	92	cf. 213	cf. 181
8	Registrar's seal	..	..	..	90	220	233	139	200	cf. 214
9	Registrar may alter forms of instruments	..	..	..	cf. 130	..	220	11	..	..
10	Penalty for counterfeiting seal or altering form with intent	..	..	..	11	..	220	..	..	..
11	Powers of Registrar ..	..	..	..	(1)	cf. 35, 186	(1)	(1)	175 (1)	cf. 33, 180
	(1) To inspect documents	..	..	..	(2)	186	(1), (3)	(2)	..	cf. 180
	(2) To summon witnesses	..	..	..	(3)	194 (1)	(2)	(3)	175 (5)	188
	(3) To administer oaths	..	..	..	(4)	(2)	(4)	(4)	68	188
	(4) To correct errors	..	..	..	(5)	(3)	(5)	(5)	175 (4)	188
	(5) To enter caveats	..	..	..	cf. 5, 6	cf. 5, 7	cf. 13, 14, 15	cf. 5	cf. 4	..
12	Appointment of Master of Titles	..	..	..	..	..	..	..	..	..
13	Qualification of Master of Titles	..	..	..	cf. 108	cf. 199	cf. 233	cf. 111	cf. 197	193
14	Special case may be stated for the Court by Registrar and Master by order of a judge	..	..	..	12	C. 19	7, 26	Act of 1863, ss. 3, 7	10	18
15	What lands subject to the Act ..	..	..	..	..	..	..	1863, ss. 3, 7	17	20
16	What lands may be brought under Act ..	..	..	..	13	21	27	cf. Act of 1863, s. 4	cf. 18	cf. 20
	What persons may apply to bring lands under Act	..	..	..	cf. 13, and Act of 1878, ss. 2, 3	21	cf. 27	cf. Act of 1863, s. 4	..	..
17	Applicant to deposit instruments of title and furnish abstract, if required	..	..	..	14	..	29	15	19	cf. 33
18	If applicant is original grantee without encumbrances registered under the general law, certificate of title issued at once	..	..	..	15	cf. 22	32	Act of 1863, s. 5	22	cf. 21

COMPARATIVE TABLES OF STATUTES.—TABLE III.

Queens-land.	SUBJECT MATTER OF SECTION.	New South Wales.	Victoria.	South Australia.	Tasmania.	New Zealand.	Western Australia.
<i>Act of 1861.</i>							
19	If applicant is not original grantee, but there are no encumbrances, advertisement necessary ..	cf. 16	cf. 23	32, 33	17	cf. 21	cf. 21, 23
20	Where title not complete, advertisement ..	17	cf. 23	32, 34	18	cf. 23	cf. 23
21	Notice of application may be given to parties interested by personal service or by advertisement ..	cf. 18	24, 25	35	19	cf. 24	cf. 23
22	Notice operates to bar action for recovery or for damages for deprivation of land ..	123	217	cf. 216	130	189	211
23	If no caveat, lands brought under Act ..	19	27	36, 37	20	25	25
24	Parties interested may lodge caveat ..	21	32	39	22	137	30
25	If caveat received within time limited, proceedings stayed ..	23	33	40	23	141	31
26	Caveats lapse in three months unless proceedings taken ..	23	34	cf. 45	24	145	cf. 32
27	Certain caveats not to bar applicant ..						
	Dissatisfied applicant may summon Registrar to show cause. Court shall order issue of fact to be tried if necessary	cf. 107, and cf. Act of 1878, s. 4	209, 210	cf. 221, 222	110	cf. 191 <i>et seq</i>	cf. 203
28	Costs of summons to be borne by applicant in any event ..	C. 107 and cf. Act of 1878, s. 4	..	C. 110, 191 (12)	cf. 110	..	cf. 203
29	Application may be withdrawn and title deeds returned ..		36	41	25	27	34
30	Upon issue of certificate, title deeds cancelled and returned by Registrar, unless they relate to other land	24	cf. 37	42	26	28	cf. 35
31	Powers of husband, &c., not to be affected by issue of certificate of title ..	26	40	43	27	64	38
32	How certificate of title issued when applicant dies before issue ..	30	44	47	31	31	48
33	Registrar to keep Register Book (and <i>see</i> Act of 1887, s. 6)	31	44	48, 49	32	31, 33	59
	Every certificate of title to be in duplicate; one to be bound up in Register Book, the other to be delivered to person entitled						
	Certificate of title conclusive evidence of title ..	33	69	80	33	cf. 65	63
	Existing encumbrances to be notified in order of priority ..	31	44	..	32	50	48
34	Grants, certificates and other instruments when deemed to be registered (and <i>see</i> Act of 1877, ss. 14, 15)	34	54	50	34	32	52
	What memorial consists of ..	37	60	51	37	34	56
35	Upon entry of memorial, instrument deemed to be embodied in register and to have effect of deed	35	cf. 92	57	35	33	cf. 53
	Every instrument to be in duplicate ..		cf. 55	C. 55	35	33	
36	Remainderman may be entered as such in register, and his name endorsed on certificate of title	cf. 88	cf. 237	cf. 75	89, cf. Act of 1886, s. 16	cf. 80	cf. 231

37	Registered remainderman must deal with his estate according to provisions of Act	..	cf. 87	..	c. 188	cf. 88	cf. 80	..
38	Certificate of title to be issued to remainderman as soon as his estate vests in possession, or to a purchaser entitled to fee-simple in possession	..	cf. 86	cf. 65	cf. 74	{ 87, and C. Act of 1886, s. 15	cf. 54, 62	60
39	Where life estate under the Act determines, remainderman or reversioner must bring his estate under the Act	..	..	..	..	..	..	cf. 60
40	Joint proprietors to hold as joint tenants	..	..	..	..	..	..	40
41	Proprietors in common to receive separate certificate of title	..	..	..	..	..	..	..
42	Percentage in the pound to be levied for assurance of title	..	..	..	..	..	..	..
43	Assurance Fund to be invested in Government securities	..	..	..	..	..	..	..
44	No person to be compensated out of Assurance Fund for loss occasioned by breach of trust	..	..	..	..	..	..	..
45	Instruments only effectual to pass estate or interest when registered	..	..	..	..	..	..	..
46	Where two conflicting instruments presented for registration, that which is accompanied by the grant or certificate or title shall be registered (and <i>see</i> Act of 1877, ss. 12-14)	..	..	..	..	..	..	..
47	Estate of registered proprietor paramount, subject to certain exceptions (and <i>see</i> Act of 1877, s. 11, <i>post</i>)	..	..	..	..	..	..	..
48	Memorial of instrument to be endorsed on duplicate grant or certificate of title, and to be receivable as evidence	..	..	..	..	..	..	..
49	Surrendered deeds and instruments dated prior to existing certificate of title not to be produced to purchaser, &c.	..	..	..	..	..	..	..
50	Reversion expectant on lease not extinguished by bringing land under Act	..	..	..	..	..	..	..
51	Mode of transfer of land	..	..	..	..	..	..	..
52	If fee-simple transferred, grant or certificate of title delivered up and cancelled as to all the land or part transferred (and <i>see</i> Act of 1877, s. 17)	..	..	..	..	..	..	..
53	Cancelled grant or certificate of title retained by Registrar and new one issued to purchaser	..	..	..	..	..	..	..
54	Easements, &c., to be registered by entry of memorial on grant or certificate of title of dominant tenement (and <i>see</i> Act of 1877, ss. 23, 28)	..	..	..	..	..	..	..
55	Mode of leasing lands for life or term exceeding three years (and <i>see</i> Act of 1877, ss. 16, 18)	..	..	..	..	..	..	..
56	Lease may contain option to purchase	..	..	..	..	..	..	..

COMPARATIVE TABLES OF STATUTES.—TABLE III.

Queensland.	SUBJECT MATTER OF SECTION.	New South Wales.	Victoria.	South Australia.	Tasmania.	New Zealand.	Western Australia.
<i>Act of 1861.</i>							
54	Lease may be surrendered by endorsement by lessee with concurrence of lessor	50	106	120-123	48	89	98
55	Entry of disclaimer of lease by trustee of insolvent lessee..	..	..	173 (1)	..	..	..
56	Mode of mortgaging or encumbering lands	54	113	128, 129	54	93	105
57	Remedy where mortgagor or encumbrancer is in default. Power of sale	55, 56	114	132, 135	53, 54	98, 101	106, 108, 109
58	Registration of transfer executed by mortgagee or encumbrancee vests land in purchaser	57	118	136	55	102	110
59	Power to vary scheduled forms of bills of mortgage or encumbrance by providing for payment by instalments and altering the statutory periods	..	116	..	..	..	..
60	Bill of mortgage or encumbrance is a security only, and not a transfer	55	114	132	53	94	106
	In case of default, mortgagee or encumbrancee may enter into possession by receiving rents, &c., or may disclaim upon tenant	cf. 58	cf. 119	cf. 137, 138, 140 to 142	cf. 56	Act of 1896, s. 7	cf. 111
	Or may bring ejectment or suit for foreclosure	..	..	..	..	97, 111	..
61	Power of mortgagee or encumbrancee to distrain on tenant	cf. 59	120	138	57	97	112, cf. 80, 81
62	Mortgagee or encumbrancee of leasehold entering into possession becomes liable to lessor	60	122	139	58	113	114
63	Mode of discharging mortgages and encumbrances by payment, or on death of annuitant, &c.	61, 62	131, 132	143, cf. seq.	59, 60	108, 110	123, 125
64	Mortgage money may be paid to Treasurer if mortgagee absent from the colony	63	133	146, 147	61	109	126
65	Transfer of registered lease, mortgage, or encumbrance	cf. 47	89	150, 151	63	82, 83	82
66	Such transfer includes transfer of right to sue under the instrument	48	90	151	64	83	83
67	General covenants to be implied in instruments	36	..	261	36	156	..
68	Special covenant of indemnity implied on transfer of land subject to mortgage or encumbrance	46	95	97	46	81	cf. 88
69	Covenants by mortgagor to be implied in every bill of mortgage	64	cf. 121	130	62	95	cf. 113
70	Covenants by lessee to be implied in every lease. (Amended by Act of 1877, s. 31)	cf. 51	cf. 100	cf. 124	cf. 49	90	cf. 92
71	Powers of lessor to be implied in every lease	52	101	125	50	91	93
72	Registrar to note particulars of re-entry by proceeding at law, and cancel lease if delivered to him	cf. 53	cf. 104, 112	cf. 126	51	cf. 92	cf. 96
73	Abbreviated forms for expressing covenants by lessee or mortgagor to be as effectual as if such covenants were set forth at length	65	cf. 102, 123	265	65	157	94
74	Implied covenants to be deemed several, and not joint	..	..	..	..	..	..
75	Implied covenant may be pleaded as if expressly made	89	137	C. 264	90	C. 158	C. 131
76	Every implied covenant to have same effect as if expressly made	..	..	263	..	159	131
77	Implied covenants and powers may be negative or modified	89	137	263	90	158	131
	Lands may be vested in trustees by an instrument of nomination	cf. 66	cf. 57	cf. 162	cf. 66	cf. 123	..

78	The trusts may be declared either by a schedule to such instrument, or by a separate instrument.	66	cf. 57	cf. 162	66	cf. 122	55
79	Copy of such separate instrument to be deposited with Registrar, but not registered	66	57	162	66	122	55
80	No entry of trusts to be made in register	67	20, 51	163 to 165	68	123 to 125	cf. 61
81	Effect of words "No survivorship"	..	..	..	..	..	..
82	If such words on instrument of nomination, they shall be written on certificate of title	cf. 67	20, 51	163, 164	68	123, 124	cf. 61
83	Registered proprietor may vest estate in his wife (or, if married woman, in her husband), or in himself jointly with others, without uses or re-assignment	cf. 85	cf. 84	cf. 111	cf. 86	cf. 80	cf. 84
84	Vesting order of Supreme Court to take effect when registered. (And see Act of 1877, s. 46)	109	188	184	112	85	182
85	Action may be brought or defended by beneficiary in name of trustee, if indemnity given	110	231	185	113	128	229
86	Repeated by Act of 1877, s. 4	75	236	170, 171, 180	76	cf. 115 to 117	cf. 234
87	Transmission by insolvency. Assignee, upon entry of his appointment in the register, empowered to deal with the lands	77	238	189, 190	78	121	226
88	Entry in register of particulars of marriage of female registered proprietor	78	138	cf. 175, et seq.	79	cf. 115, et seq.	132
89	Proviso for acknowledgment where required (as to which see s. 112, post)	79, 80	62, 226	cf. 175, et seq.	80, 81	cf. 115, et seq.	cf. 219, 220
90	Transmission of mortgage encumbrance or lease on death of registered proprietor thereof	92, and see Act of 1878, s. 13	139, 191	105, 110	C. 94	..	cf. 133, 185
91	Transmission of land on death of registered proprietor. (Amended by Act of 1877, s. 32, and see Intestacy Act of 1877, <i>passim</i>)	..	cf. 151	..	..	..	..
92	Powers of Supreme Court under 6 Anne c., applicable to land under the Act	97	77	78	99	74	cf. 71
93	Writ of execution does not bind land until registered, and ceases to bind land unless transfer lodged within three months	cf. 91	cf. 80	cf. 220 (9)	cf. 93	88	cf. 74
94	Partition, how made	112	cf. 73	..	115	..	cf. 67
95	Agent holding power of attorney to sell land may bring it under the Act and receive certificate of title in the name of his principal	81	144	191 (1)	82	138	cf. 137
96	Upon surrender of existing grants or certificates, proprietor may obtain a single certificate of title for all land included therein, and <i>vice versa</i>	{ cf. 82	{ cf. 38, 145	{ cf. 181, (2), (4)	{ cf. 83	{ cf. 143, 144	{ 138
97	Registrar may dispense with production of grant, certificate, or other instrument in certain cases	81	144	191 (1)	82	139	cf. 137
98	Certificate of title to be conclusive proof of title of registered proprietor in action by him for specific performance	83	146	191 (3)	84	142	139
99	No vendor's lien over land under the Act	..	..	..	..	..	137
100	Caveat may be lodged to prevent any dealing with land under the Acts	..	..	..	..	..	cf. 140
101	Registrar to notify every caveat to parties	..	..	..	..	..	cf. 143
102	Caveator may be summoned to show cause why he should not withdraw caveat	..	..	..	..	..	cf. 143
103	Contents of every caveat	..	..	..	..	..	cf. 143
104	Effect of caveat under s. 98	..	..	..	..	..	cf. 143
105	When Registrar may cancel caveat	..	..	..	..	..	cf. 143
106	Action against person lodging caveat without reasonable cause. (See further as to Caveats, Act of 1877, ss. 36 et seq.)	..	..	..	..	..	cf. 143
107	Registration of power of attorney given by a registered proprietor	69	cf. 147	191 (10), (12)	85	147	cf. 143
108	..	..	cf. 160	155, 156	70	cf. 152, 153	cf. 143

COMPARATIVE TABLES OF STATUTES.—TABLE III.

Queens-land.	SUBJECT MATTER OF SECTION.	New South Wales.	Victoria.	South Australia.	Tasmania.	New Zealand.	Western Australia.
<i>Act of 1861.</i>							
105	Registered proprietor of land may obtain registration abstract to deal with land when beyond the colony	70	C. 153	..	71	129, 130	..
106	Mode of procedure under registration abstract	71	154	..	72	131, 132	..
107	General rules applicable to powers of attorney and registration abstracts	cf. 72, 73	cf. 155, 156	..	cf. 73, 74	cf. 133, 136	..
108	Revocation of power of attorney	74	cf. 150	187	75	164, Act of 1888, s. 11	cf. 143
109	Transferee, <i>whether voluntary or not</i> , not affected by mere notice. Saving rights of creditors under 13 Eliz., c. 5	cf. 111	cf. 140	cf. 186, 187	cf. 114	cf. 189	cf. 134
110	Consent may be given by endorsement .. .. .	..	..	244	..	..	..
111	Provision for cases of infancy or other incapacity .. .. .	..	92	cf. 255, 267	..	C. 165	cf. 85
112	Acknowledgment of married woman, how made	96	..	..	..	..	..
113	Rights and liabilities during coverture .. .. .	..	..	..	..	C. 165	..
114	Corporations may seal, instead of signing, instruments under the Act	93	136	270	95	166	130
115	Attestation and proof of execution of instruments. (Amended by Act of 1877, s. 5)	94	152	267, 268	Act of 1886, s. 29	cf. 160, 161, 169, 1888, s. 12	cf. 145
116	Mode of proving execution of instruments	95	152	268	do.	162, 163	cf. 145
117	Provisional certificate of title issued where grant or certificate lost, &c.	98	81, 84	79	100	75	75
118	Surveyors may be licensed for purposes of Act	100	16, 17, 172	243	See 108	170, Act of 1888, s. 8	15
119	Registered proprietor subdividing land shall deposit map	100	cf. 172	101	103	cf. 171, et seq.	166
120	Registrar may require map or plan to be deposited. (And see <i>Undue Subdivision of Land Prevention Act</i> , ss. 7, 8, <i>post</i>)	101	..	220 (8)	104	cf. 171, et seq.	166
121	Searching the Register. (See Act of 1877, s. 50)	103	241	65	106	40	239
122	Certified copy obtainable, and <i>prima facie</i> evidence of contents of instrument	102	241	..	105	39	239
123	No action of ejectment against registered proprietor, except in certain cases	115	205	C. 192, et seq.	124	56	cf. 199

194	Upon recovery of land, &c., Court may order cancellation of instrument or entry, and substitution of new one	128	206	cf. 64	138	73	200
125	Registration as proprietor to be equivalent to possession ..	cf. 117	cf. 207	cf. 203, et seq.	cf. 125	..	202, cf. 201, 211
126	Any person deprived of land may recover damages from person benefited ..	118	208	207	126	190	190
	No action of ejectment or for recovery of damages against a <i>bonâ fide</i> purchaser for value	cf. 122	cf. 217	C. 215	cf. 130	cf. 187	201, 210
127	Limitation of actions ..	cf. 117, 124	cf. 202, 211, 212, 213	cf. 206, 212	cf. 127, 133	cf. 178, et seq.	cf. 195, 197, 211, 210, 209
128	If remedy ineffective, damages recoverable from Assurance Fund. Registrar has remedy over to recoup Assurance Fund. Limitation of actions	cf. 119	cf. 211	cf. 208	cf. 128	cf. 178, et seq.	cf. 205, 209
129	Action against Registrar for misfeasance, &c. ..	cf. 120	cf. 215	..	cf. 129	cf. 180	cf. 196
130	Notice of action to be given ..	cf. 120	cf. 215	60, 61	136	69, 70	cf. 76
131	If defendant in such case successful he is entitled to costs ..	cf. 126	cf. 82	..	..	..	..
132	Holder of instrument wrongly issued, &c., may be summoned before Registrar. On his refusal to attend, judge may issue warrant	127	83	62, 63	137	71, 72	cf. 77
133	Substituted service of summons	127	83	63	137	72	..
134	Registrar or Court may order delivery of instrument, and if necessary, Registrar may issue new one	125	204	24	134	220	198
135	Proceedings in absence of person summoned	104	..	252, 273	107, and Act of 1886, s. 30	168	..
136	Registrar or Court to award costs and expenses ..	105, and Act of 1873, s. 4	197	22	108	211	191
137	Costs and expenses unpaid to be levied by distress	106	196, 200	23	109	..	190
138	No distress to be trespass for want of form ..	130	220	229	139	200	cf. 215-7
139	Personal immunity of Registrar and officers ..	cf. 135	cf. 224	et seq. C. 235 et seq.	et seq. 144	et seq. cf. 216	cf. 218
140	Witness summoned by Registrar to have expenses tendered ..	..	..	..	..	..	..
141	Applicant for registration or his solicitor to certify correctness of instrument. Penalty for false certificate	..	..	..	..	..	..
142	Fees to be charged ..	..	..	..	..	..	..
143	Registrar to pay moneys into Treasury, and Treasurer to pay absent mortgagees and other parties entitled on a proper warrant	..	..	..	..	..	..
144	Penalties. [Partly repealed by 29 Vic. No. 14 (<i>Criminal Statutes Repeal Act, 1865</i>)] ..	..	..	..	..	..	..
145	Offences to be prosecuted and penalties to be recovered in name of Attorney-General or Registrar	..	..	..	..	..	..
146	Commencement of Act, 1st January, 1862	..	..	..	..	..	..
147	Act to be read with Principal Act	..	..	..	..	..	..
148	Short Title ..	..	..	..	..	..	..
149	Interpretation (Adding to Principal Act, s. 3)	..	..	..	..	..	..

COMPARATIVE TABLES OF STATUTES.—TABLE III.

Queens-land.	SUBJECT MATTER OF SECTION.	New South Wales.	Victoria.	South Australia.	Tasmania.	New Zealand.	Western Australia.
<i>Act of 1877.</i>							
4	Repeal of Principal Act, s. 85 .. .. .	..	..	..	..	..	..
5	Proof of execution and attestation of documents (Amending Principal Act, s. 115)	3	14	See 201	See 28	210	14
6	Sworn appraisers to value land may be appointed	129	14	cf. 272	..	210	..
7	Oath of sworn appraiser .. .. .	..	..	..	..	..	..
8	Effect of conveyance of land before Crown grant on application to bring such land under Act .. .. .	..	..	..	..	..	..
9	Application when third party interested only to be withdrawn with his consent (Amending Principal Act, s. 20) .. .. .	..	..	..	See 32	..	..
10	Where applicant's title is defective, it may be supplemented by consent of parties entitled .. .. .	..	..	..	..	..	..
11	Estate of registered proprietor not paramount to unregistered leases for terms not exceeding three years (Amending Principal Act, s. 44) .. .. .	..	..	..	..	..	..
12	Priorities of instruments under the Act (Adding to Principal Act, s. 43)	35	37	56, 58	35	33	53
13	Separate register of powers of attorney to be kept (Amending Principal Act, s. 104) .. .. .	..	..	..	..	3	..
14	Instruments when registered take effect from time of production for registration (Adding to Principal Act, s. 34) .. .. .	..	..	..	..	..	..
15	Time of production for registration deemed to be date of instrument (Adding to Principal Act, s. 34) .. .. .	..	..	..	..	..	..
16	Transfers of land in fee-simple need not be in duplicate	Act of 1873, s. 2	55	See 55	cf. Act of 1886, s. 33	See 33	54
	Leases may be in triplicate .. .. .	..	56	..	Act of 1886, s. 32	54	54
17	Transfer by endorsement on grant or certificate of title where all land transferred (Amending Principal Act, ss. 49, 50)	Act of 1873, s. 1	94	99	Act of 1886, s. 12	77	cf. 86, 87
18	Leases for terms not exceeding three years valid though unregistered. If in proper form may be registered (Amending Principal Act, s. 52) .. .. .	..	..	..	..	Act of 1888, s. 9	..
19	Mortgagee or encumbrancee purchasing land entitled to certificate of title clear of such mortgage, &c. .. .. .	..	..	..	..	..	..
20	In case of sale by mortgagee or encumbrancee he may retain principal moneys, though not due (Amending Principal Act, s. 57) .. .. .	..	..	..	..	..	..
21	Rights in respect of money lent on a joint account to survive .. .. .	..	..	..	..	..	..
22	Mortgages to building societies. (This section does not apply to Societies registered under <i>The Building Societies Act of 1886</i> ; see s. 46 of that Act) .. .. .	..	..	..	..	..	..

23	Land may be transferred subject to charge or easement .. .. .	..	..	Act of 1886, s. 17	..
24	Transfer subject to a charge .. .. .	..	..	..	..
25	Memorandum of transfer and charge to be in duplicate	..	..	..	..
26	Transfer and charge when registered to be equivalent to Bill of Mortgage	..	..	..	..
27	Transferee entitled to certificate of title noted with particulars of charge or easement..	..	..	..	..
28	Where easement created by transfer and charge or otherwise, transferor or other person entitled to certificate of title for easement	..	..	..	..
29	Husband consenting to wife's bill of mortgage to be liable on implied covenants	..	..	..	..
30	Equitable mortgage may be created by deposit. Mortgagee may lodge caveat	..	..	..	..
31	If buildings on land destroyed, lessee's obligation to pay rent and keep in repair suspended.	..	..	..	..
32	(Amending Principal Act, s. 70; see Settled Land Act, s. 69 (<i>"infra"</i>)	..	..	..	..
33	Heir-at-law, devisee, administrator, &c., may apply to the Registrar to be registered as proprietor. (Amending Principal Act, ss. 88 and 89, and see <i>Intestacy Act of 1877, passim</i>)	..	..	..	..
34	Provisions of Principal Act as to bringing land under Act to apply to applications under last section	..	..	..	..
35	Effect of order annulling adjudication of insolvency on registered transmission (addition to Principle Act, s. 86)	..	..	..	..
36	Form and effect of transfer on sale by sheriff .. .. .	..	..	..	..
37	Caveats to state addresses of persons to whom the same should be notified (<i>see</i> Principal Act, s. 98, <i>et seq.</i>)	..	..	..	..
38	Notification of caveat under Principal Act, s. 99 may be posted	..	..	..	..
39	Any person interested or prejudiced may procure removal of caveat in manner specified by Principal Act, s. 99	..	..	..	..
40	Caveats under Principal Act, s. 98, to lapse in three months, except in certain cases ..	..	..	..	..
41	Second caveat not to be lodged on same grounds..	..	..	..	..
42	List of licensed surveyors to be published annually (<i>see</i> Principal Act, s. 118)	..	..	..	..
43	Licensed surveyors to correct errors in surveys, &c., at their own expense ..	..	..	..	..
44	Licences may be revoked or suspended .. .. .	..	..	..	..
45	Appeal by licensed surveyor to Board .. .. .	..	..	..	..
46	Registrar to make regulations to carry out last four sections	..	..	..	..
47	Particulars of vesting order to be entered in Register (<i>see</i> Principal Act, s. 83; and <i>see also Trustees and Executors Act of 1897, s. 31 post</i>)	..	..	..	..
48	In case of ejectment of defendant who has made improvements, plaintiff shall either pay their value or recover damages for loss of land	..	..	..	..
49	Registrar to be made co-defendant where defendant entitled to indemnity from assurance fund, and only liable for actual loss sustained by defendant	..	..	..	..
50	Unregistered instrument to confer claim to registration .. .. .	..	..	..	..
51	Transmission of estate where person entitled to be registered as proprietor dies before registration	..	..	..	..

COMPARATIVE TABLES OF STATUTES.—TABLE III.

Queens- land.	SUBJECT MATTER OF SECTION.	New South Wales.	Victoria.	South Australia.	Tasmania.	New Zealand.	Western Australia.
<i>Act of 1877.</i>							
50	Searches for and copies of instruments lodged or deposited (but not registered) whether cancelled or not (adding to Principal Act, s. 121)	..	..	249	..	..	..
51	Equities not abolished .. ..	..	..	..	..	..	..
52	Commencement of Act, 1st January, 1878 .. ..	..	..	..	..	..	..
<i>Reg. of Titles Act of 1884.</i>							
1	Governor in Council may appoint Registrar of Titles .. ..	..	..	..	..	..	..
2	Duties of Registrar-General under Real Property Acts and Acts relating to registration of deeds to be transferred to Registrar of Titles .. ..	..	..	..	..	..	..
3	Deputy Registrars may be appointed .. ..	..	..	..	..	..	..
4	Real Property Acts and Acts relating to Registration of Deeds to be read as if "Registrar of Titles" were substituted for "Registrar-General" in them .. ..	..	..	..	..	..	..
5	Registrar to have seal of office .. ..	..	..	..	..	..	..
6	Office copies of transcripts of deeds registered in New South Wales before Separation to be admissible in evidence .. ..	..	..	..	..	..	..
7	Short Title .. ..	..	..	..	..	..	..
<i>R.P. (Local Reg.) Act of 1887.</i>							
1	Short Title .. ..	..	..	..	..	..	..
2	Interpretation .. ..	..	..	..	..	..	..
3	Act to be read with, and as amendment of, Principal Act .. ..	..	..	..	..	..	..
4	Local registries established at Rockhampton and Townsville .. ..	..	..	..	..	..	..
5	Duplicate of so much of Register Book as relates to land in each district to be transmitted to local registry .. ..	..	..	..	..	..	..
6	Local Deputy Registrar to keep a book in continuation of such duplicate register, to be called Local Register Book .. ..	..	..	..	..	31	..
7	Transactions affecting land to be dealt with and registered at local registries .. ..	..	..	..	..	..	..
	But all applications to bring land under Act to be made to Registrar at Brisbane .. ..	..	..	..	..	..	..

Before issue of certificate of title to applicant, its duplicate forwarded with it to local Registrar, who enters one duplicate in Local Register Book and issues the other ..
 Provisions of Principal Act to apply to instruments lodged, entries made, &c. ..
 Offences under Principal Act to be offences under this Act. ..
 "Registrar-General," as used in Principal Act, deemed to include Local Deputy Registrar ..
 Each Local Deputy Registrar to have a seal of office ..

Unlawful to deposit with Registrar a map or plan of subdivision in which allotment of land is shown to be less than 16 perches (*see* Principal Act, s. 130, *ante*)

*Settled
Land Act*
1886.

PART IX.—APPLICATION OF ACT TO LAND UNDER REAL PROPERTY ACTS

Registered proprietor or proprietors deemed to be trustee or trustees of settlement ..
 Upon written request of tenant for life, proprietor may exercise power conferred on tenant for life ..
 Instrument may be executed by proprietor instead of tenant for life ..
 Registered proprietor executing power shall incur no liability to beneficiary ..
 Provision for conveyance to uses ..
 Where contract is by this Act made binding on the settled land, it shall be binding on registered proprietor

Section 31 of the Amending Act (1877) shall not apply to a lease of settled land made by a tenant for life (*see* Act of 1877, s. 31, *supra*)

"Deed" includes instrument under Real Property Act ..
 Persons dealing with proprietor not bound to inquire whether provisions of this Act complied with

*Married
Women's
Pr. Act,*
1880.
s. 24

"Investment" includes land held under the Real Property Acts ..

*Trustees
and Ex.
Act of*
1887.
s. 31

Vesting of land or interest in land on sale or mortgage by order of the Court ..

COMPARATIVE TABLES OF STATUTES.—TABLE IV.

South Australia.	SUBJECT MATTER OF SECTION.					Queens- land.	New South Wales.	Victoria.	Tasmania.	New Zealand.	Western Australia.
<i>Act of 1886.</i>											
	PART I.—INTRODUCTORY										
1	Short Title ..	..	..	..	..	..	..	..	..	..	..
2	Division of Act into parts ..	..	..	..	..	..	..	..	..	..	..
3	Interpretation { (a) Definitions ..	..	..	..	..	..	..	..	..	..	..
4	Repeal ..	..	..	..	..	..	..	..	..	..	..
5	Saving clause ..	..	..	..	..	..	..	..	..	..	..
6	Laws inconsistent not to apply to lands under the Act ..	..	..	..	..	..	..	..	..	..	..
7	Lands under previous Real Property Acts to be under this Act ..	..	..	..	..	..	..	..	..	..	..
8	Lands under Acts not to be withdrawn therefrom ..	..	..	..	..	..	..	..	..	..	..
9	Commencement of Act ..	..	..	..	..	..	..	..	..	..	..
	PART II.—OBJECTS OF THIS ACT										
10	Objects of Act ..	..	..	..	..	..	..	..	..	..	..
11	Construction to be favourable to objects ..	..	..	..	..	..	..	..	..	..	..
	PART III.—THE LANDS TITLES REGISTRATION OFFICE										
12	Lands Titles Office at Adelaide to be continued ..	..	..	..	..	..	..	..	..	..	..
13	Registrar-General and officers to perform duties under this Act ..	..	..	..	..	..	..	..	..	..	..
14	Removal of officers ..	..	..	..	..	..	..	..	..	..	..
15	Governor may appoint acting solicitor to the department ..	..	..	..	..	..	..	..	..	..	..
16	Appointment and duties of acting Registrar-General ..	..	..	..	..	..	..	..	..	..	..
17	When his duties cease ..	..	..	..	..	..	..	..	..	..	..
18	The Deputy Registrars-General ..	..	..	..	..	..	..	..	..	..	..
19	Solicitor to the department must not practice ..	..	..	..	..	..	..	..	..	..	..
20	Solemn declaration of officers ..	..	..	..	..	..	..	..	..	..	..
21	Registrar-General's seal of office to be received in evidence ..	..	..	..	..	..	..	..	..	..	..
						8, Regr. of Titles Act 1884, s. 5	7	10	8, 91	9	10
22	Fees to be charged ..	..	..	..	..	140	105	197	108	211	191
23	Registrar-General to pay moneys into Treasury and render accounts ..	..	..	..	..	141	106	196, 200	109	..	190
24	Personal immunity of Registrar-General and officers ..	..	..	..	..	137	125	204	134	220	198
	PART IV.—THE BRINGING OF LAND UNDER THIS ACT										
25	Lands divided into two classes..	..	..	..	..	..	..	..	..	..	..

		15	12	C. 19	Act of 1863, ss. 3, 7 Act of 1863, s. 4 cf. Act of 1863, s. 4	10	C. 18
26	What lands subject to the Act (and see s. 7, ante)	..	..	..	..	..	..
27	What lands may be brought under Act ..	..	..	..	..	..	..
28	What persons may apply to bring lands under Act	..	..	..	..	..	..
29	Undivided shares and mortgaged lands and lands of married women only to be brought under Act on conditions	..	..	..	..	..	..
30	Applicant to surrender documents of title and furnish abstract if required	..	..	..	..	..	..
31	Statements in application to be verified by declaration	..	..	..	..	..	..
32	Application to be examined by the solicitor	..	..	..	..	..	..
33	Applications to be divided into three classes	..	..	..	..	..	..
34	If applicant is original grantee, without encumbrance, certificate of title to be issued at once	..	..	..	..	..	..
35	If applicant is not original grantee, but there are no encumbrances, advertisement necessary	..	..	..	..	..	..
36	Where title not complete, advertisement	..	..	..	..	..	..
37	Notice of application may be given to parties interested by personal service or by advertisement	..	..	..	..	..	..
38	If no caveat, lands brought under Act	..	..	..	..	..	..
39	Land brought under Act by issue of certificate of title	..	..	..	..	..	..
40	On failure of service of notice, what course to be pursued	..	..	..	..	..	..
41	Parties interested may lodge caveat in form of Schedule III	..	..	..	..	..	..
42	If caveat received within time limited, proceedings stayed	..	..	..	..	..	..
43	Application may be withdrawn and title-deeds returned	..	..	..	..	..	..
44	Upon issue of certificate of title, title-deeds cancelled and retained by Registrar-General, unless they relate to other land	..	..	..	..	..	..
45	How certificate of title issued when applicant or nominee dies before issue	..	..	..	..	..	..
46	Caveat—how removed, &c. (See s. 191, post)	..	..	..	..	..	..
47	Caveat lapses unless proceedings taken within one month	..	..	..	..	..	..
48	Caveat cannot be renewed without leave of Court	..	..	..	..	..	..
49	Reversion expectant on lease not extinguished by bringing land under Act	..	..	..	..	..	..
50	PART V.—THE REGISTRAR BOOK. Registrar-General shall continue to keep Register Book Certificate of title to be in duplicate, original to be bound in Register Book, duplicate delivered to proprietor of land Each original to constitute a folium of Register Book, on which memorials to be entered Certificate of title and other instruments, when deemed to be registered	..	..	..	..	..	..

COMPARATIVE TABLES OF STATUTES—TABLE IV.

South Australia.	SUBJECT MATTER OF SECTION.	Queens- land.	New South Wales.	Victoria.	Tasmania.	New Zealand.	Western Australia.
<i>Act of</i> 1886. 51	What memorial consists of	34	37	60	37	34	56
52	Memorandum of registration to be endorsed on instrument, and to be conclusive evidence	45	cf. 38	cf. 61	cf. 38	35	cf. 57
53	Memorial to be recorded on duplicate certificate of title, except in certain cases	45	38	61	38	35	cf. 57
54	Instruments not to be registered unless in accordance with Act. (<i>See vide s. 247, post</i>) .. .. .	..	41	..	41	37, 212	..
55	Instruments may be single or duplicate	C. 35, Act of 1877, s. 16	C. 35, Act of 1873, s. 2	C. 55	C. 35, Act of 1886, s. 33	C. 33	C. 53
	Leases may be duplicate or triplicate (<i>see vide s. 93 post</i>)	C. Act of 1877, s. 16	..	56	C. Act of 1886, s. 32	..	..
56	Instruments to be attested by witness, and to be registered in order of production, and to take priority according to registration; one copy to be filed in Registry	35, 115, and Act of 1877, s. 12	35	cf. 54, 55	35	33	53
57	Instruments, when registered, deemed part of Register Book, and have effect of deed	35	35	cf. 54, 92	35	33	..
58	Where two conflicting instruments presented for registration at the same time, that which is accompanied by the certificate of title, &c., shall be registered	43	39	30	39	36	58
59	Registration where party executing instrument dies before registration .. .. .	..	..	..	..	..	..
60	Holder of instrument wrongly issued or retained may be required by Registrar-General to deliver it up	130	126	82	136	69	cf. 76
61	In case of refusal, summons and warrant issued	130	126	82	136	70	cf. 76
62	Court may order delivery, and may commit to gaol	132	126	83	137	71	cf. 77
63	Court may order cancellation of instrument, and issue of new one	132	127	83	137	72	cf. 77
64	In any legal proceeding under the Act, Court may order cancellation, &c., of instrument or entry, or substitution of new one	124	128	206	138	73	cf. 200
65	Searching the Register	121	103	241	106	40	239
66	In conflict between duplicate certificate of title and Register Book, latter to prevail .. .. .	..	..	..	..	..	..
	PART VI.—THE TITLE OF REGISTERED PROPRIETORS.	..	..	..	..	..	..
67	Instruments only effectual to pass estate or interest when registered	43	39	63	39	36	58
68	Definition of "Registered Proprietor"	3	3	4	3	2	..
69	Title of registered proprietor indefeasible, except in certain cases	cf. 44	cf. 40	cf. 74	cf. 40	cf. 55	cf. 68
	Exception (6).—Certificate void as against person rightly in adverse possession when land brought under Act .. .. .	..	..	..	135	67	..

[illegible]

COMPARATIVE TABLES OF STATUTES.—TABLE IV.

South Australia.	SUBJECT MATTER OF SECTION.	Queens- land.	New South Wales.	Victoria.	Tasmania.	New Zealand.	Western Australia.
<i>Act of</i> 1886.							
97	Transferee of land subject to mortgage or encumbrance to indemnify transferor	68	46	95	46	81	cf. 88
98	Upon registration of transfer, certificate of title to be cancelled	49	44	93	44	77	cf. 86
99	Except where all the land is transferred, when transfer is endorsed on certificate of title (<i>sed vide Act of 1893, s. 4, post</i>)	Act of 1877, s. 17	Act of 1873, s. 1	94	Act of 1886, s. 12	78	87
100	Where certificate of title cancelled on transfer, new certificate of title issued to transferee, and balance certificate of title to transferor	50	45	93	45	79	cf. 86
101	Registered proprietor subdividing land shall deposit map	119	100	cf. 172	103	cf. 171, <i>et seq.</i>	cf. 166
102	Memorial of order for sale of land for non-payment of rates to operate as caveat	..	..	..	..	..	..
103	Registration of transfer thereunder	..	..	..	..	..	..
104	Discharge of such memorial	..	..	..	..	..	..
105	Sale under <i>fi. fa.</i> or order of Court	..	..	..	..	..	..
	Memorial of writ or order to operate as caveat	..	..	..	..	..	..
106	Until entry of memorial, land not bound as against purchaser for value	..	..	..	..	..	..
107	Transfer on such sale	do.	do.	129	do.	..	cf. 133
108	Production of duplicate certificate of title not necessary for registration of transfer on sale under writ or order	do.	do.	139	do.	..	cf. 133
109	Entry of satisfaction of writ or order	..	..	..	..	..	cf. 133
110	Entry of satisfaction of writ or order	91	92	139, 191	..	..	185, cf. 138
111	Lapse of order, writ, &c., unless transfer presented for registration within six months	cf. 91	cf. 92	cf. 139	..	..	cf. 133
112	Proprietor may transfer to wife (or, if married woman, to husband), or to himself and others jointly, or may limit future estates without uses or re-assignment	82	85	91	86	80	cf. 84
113	Dealings may be registered prior to issue of Crown grant	..	99	79	Act of 1886, s. 11	..	cf. 73
114	Deed-poll under <i>Land Clauses Consolidation Acts</i> to have effect of transfer executed by proprietor	..	..	..	..	..	..
115	Mode of registration of such deed-poll	..	..	..	..	..	..
116	This Act not to alter effect of deed-poll	..	..	..	..	..	..
117	Mode of leasing land for life or term exceeding one year	..	..	..	..	..	..
118	Contents of lease. It may contain option to purchase	..	..	..	..	..	..
	Lease not to bind mortgagee or encumbrancee without consent	..	..	..	..	..	..
		cf. 52	cf. 49	cf. 99	cf. 47	cf. 86	cf. 91
		53	49	..	47	87	..
		52	49	99	47	88	..

	..	..	..	..	..	cf. Act of 1898, s. 9
Lease for one year need not be registered						
Lease may be surrendered by endorsement with concurrence of lessor Registrar-General to enter memorial of surrender						
Effect of such entry						
Surrender to be subject to consent of mortgagee and under-lessee						
Covenants by lessee to be implied in every lease						
Powers of lessor to be implied in every lease						
Registrar-General to note particulars of re-entry in accordance with terms of lease or last section or on recovery by law, and to cancel lease if delivered to him						
Lease may be registered though time for payment of succession duty has not arrived.. .. .						
PART XII.—MORTGAGES ENCUMBRANCES AND DISCHARGES						
Mode of mortgaging or encumbering lands						
Contents of mortgage or encumbrance						
Covenants by mortgagor to be implied in every mortgage						
Any other mortgage or encumbrance may redeem mortgage or encumbrance of same land						
Mortgage or encumbrance to make effect as security only and not as transfer						
Procedure in case of default						
Power of sale						
Mortgagee's receipt discharges purchaser						
Appropriation of proceeds of sale (and see Act of 1893, s. 2, post)						
Registrar-General to give effect to sale						
In case of default mortgages or encumbrances may enter into possession and receive rents and profits or may distrain on tenant, or let land for a year or bring action for recovery						
Power to distrain on tenant						
Mortgagee or encumbrancee of leasehold entering into possession liable to lessor						
Mortgagee may apply to Registrar-General for an order for foreclosure						
Order may be made by Registrar-General after advertisement offering land for sale						
Such order vests land in mortgagees						
Mode of discharging mortgages and encumbrances by payment						
Discharge subsequent to partial discharge						
Discharge of annuity, &c., by death or other event						
Mortgage money may be paid to Treasurer if mortgagee absent from colony						
And the mortgage shall be discharged on production of Treasurer's receipt						
Registrar-General may enter discharge in certain cases on proof of payment						
Equitable mortgage may be created by deposit						

COMPARATIVE TABLES OF STATUTES.—TABLE IV.

South Australia.	SUBJECT MATTER OF SECTION.	Queens- land.	New South Wales.	Victoria.	Tasmania.	New Zealand.	Western Australia.
<i>Act of</i> 1886.							
150	Transfer of lease mortgage or encumbrance	cf. 65	cf. 47	cf. 89	cf. 63	cf. 82	..
151	Transferee takes rights and liabilities of transferor, including right to sue under instrument	65, 66	47, 48	89, 90	63, 64	83	83
152	Implied covenants by transferee on transfer of lease	..	..	103	..	84	95
153	PART XIII.—EXTENSIONS						
154	Mode of extending mortgage, encumbrance, or lease	..	..	..	..	..	..
155	Effect of registration of extension	..	..	..	..	..	..
156	PART XIV.—POWERS OF ATTORNEY						
157	Power of attorney given by applicant or proprietor	cf. 104	cf. 69	cf. 150	cf. 70	cf. 152	cf. 143
158	Duplicate or attested copy to be deposited	cf. 104	cf. 69	cf. 150	cf. 70	cf. 153	cf. 143
159	Entry of revocation of power of attorney	108	74	150	75	154	cf. 143
160	Validating powers of attorney heretofore given	..	..	..	..	..	..
161	Entry of death of grant on copy filed	..	..	..	..	..	..
162	Instruments executed before such entry of death or revocation to be valid	..	..	..	..	..	..
163	PART XV.—TRUSTS AND TRANSMISSIONS						
164	Public trusts contained in Crown grant to be inserted in certificate of title	..	..	..	..	cf. 122	..
165	No particulars of trusts to be entered in Register Book. Instrument declaring trusts may be deposited	cf. 78, 79	cf. 66	cf. 57	cf. 66	cf. 122	cf. 55
166	In transfer to joint proprietors, the words "no survivorship" may be inserted	cf. 80, 81	67	20	68	123	cf. 61
167	Registrar may insert such words in register, &c., at request of joint proprietors	..	67	66	68	124	cf. 61
168	Effect of such words—no dealing by survivors except by order of Court	..	cf. 67	cf. 66	cf. 68	cf. 125	cf. 61
169	Court may direct advertisement before making order	..	cf. 80	67	69	126	cf. 62
170	Court in making order may protect beneficiaries	..	68	67	69	126	..
171	Survivors not prevented from appointing new trustee	..	80	..	..	..	..
172	Proprietor, devisee, transferee, &c., may disclaim his interest	..	..	..	..	..	..
173	Transmission by insolvency or statutory assignment	86	75	236	76	115, 116	cf. 234
174	Transmission to be entered in Register Book, whereupon Official Receiver or trustee becomes separate proprietor	86	75	236	76	117	cf. 234
175	If statutory assignment declared void, and assignor adjudged insolvent, receiver or trustee to be registered as proprietor	..	..	..	..	..	..
176	Insolvency or assignment of lessee	55	..	..	..	..	..
177	(1.) If lease not subject to mortgage or encumbrance, trustee may disclaim and surrender to lessor	..	76	105	77	119	97
178	(2.) If lease subject to mortgage or encumbrance, mortgagee or encumbrance may foreclose upon disclaimer from trustee	..	..	..	..	..	97
179	(3.) Protection to subsequent mortgages and encumbrances	..	..	..	..	..	97
180	(4.) Where both trustee and mortgagee, &c., neglect to become registered as proprietor of lease, entry to that effect operates as surrender	..	76	105	77	120	..

174	Entry of surrender or foreclosure not to prejudice causes of action against lessee	..	cf. 88, 89, Act of 1877, s. 32	cf. 78, 79	cf. 138, 225, 226	cf. 79, 80	cf. 115, et seq.	cf. 132, 219, 220
175	On death of registered proprietor of any estate or interest, his estate transmitted to executor or administrator or Public Trustee	..	..	..	..	..	..	..
176	Such person to make application to be registered as proprietor	..	..	..	..	..	..	cf. 132, 219, 220
177	Memorial of will and probate or of letters of administration, &c., to be entered by Registrar	..	..	..	..	..	..	cf. 132, 219, 220
178	Applicant thereupon becomes registered proprietor	..	..	..	..	..	..	cf. 132, 219, 220
179	Where two or more executors or administrators, all must concur	..	..	..	..	..	..	..
180	Person registered in place of deceased or insolvent proprietor to be named absolute proprietor for the purpose of dealing with land	..	..	..	..	..	..	..
181	Where such registered proprietor refuses to transfer, beneficiary may apply by summons or motion	..	..	..	..	..	..	..
182	Court may order transfer	..	..	..	..	..	..	..
183	And may decide questions of title or direct issue to be tried	..	..	..	..	..	..	..
184	Vesting order of Supreme Court to take effect when registered	..	..	..	..	..	..	..
185	Action may be brought or defended by beneficiary in name of trustee, if indemnity given	..	88, Act of 1877, s. 46	109	188	112	85	182
186	Sufficiency of indemnity to be determined by Master	..	84	110	231	113	128	229
187	Purchaser from registered proprietor not affected by mere notice	..	..	..	..	..	..	..
188	Except in case of fraud	..	cf. 109	111	140	114	189	184
189	Registration of survivor of joint proprietors or of remainderman, &c.	..	109	111	140	114	189	184
190	Marriage of female proprietor to be certified to Registrar-General	..	cf. 38	87	229	88	cf. 80	cf. 227
191	If land not held by wife for separate use, husband to be registered as co-proprietor	..	87	77	228	78	121	226
	PART XVI.—CAVEATS	..	cf. 87	77	228	78	121, 165	226
	Settlor, or beneficiary under will or settlement, or person claiming interest, may lodge caveat against registration of any dealing with the land	..	98	81	144	82	138	..
	(1.) Form of caveat (Schedule XII.)	..	100	81	144	82	139	137
	(2.) Memorandum of caveat to be entered in Register, and notice sent to person whose title is questioned	..	99	82	145	83	143	138
	(3.) Effect of caveat	..	101	83	146	84	142	139
	(4.) Registered proprietor or other person interested may summon caveator	..	99	82	145	83	144	138
	(5.) Caveatee may apply to Registrar-General to remove caveat	..	..	..	..	..	..	..
	(6.) After lapse of 21 days after notice of such application given to caveator, caveat may be discharged	..	C., Act of 1877, s. 39	cf. 82	cf. 145	cf. 83	cf. 146	cf. 138
	(7.) Caveator may apply to Court for an order to extend time	..	..	..	..	..	..	..
	(8.) Caveator may withdraw caveat. Court may order him to pay costs	..	..	..	..	..	..	..
	(9.) Order of Court affecting caveat to be registered	..	102	..	cf. 145	..	..	cf. 138
		..	..	..	144	82	148	137

		cf. Act of 1872, s. 47	cf. 116	211, 207	..	cf. 186	cf. 201, 205
200	Value of buildings erected after deprivation to be excluded from calculation of damages	..			..	180	208
210	Written claims for compensation may be served on Registrar-General, who may admit claim	..	..	214	..	185	196
211	Assurance Fund not liable for breach of trust, nor in certain other cases	42	124	202	133	..	cf. 196
212	Assurance Fund not liable for misdescription of boundaries or parcels, except in certain cases	..	cf. 124	cf. 202	cf. 133	C. 178	..
213	Proceedings against Registrar-General, how taken	C. 127, 128	C. 119	C. 211	C. 128		
	(1.) Mode of application by claimant	..					
	(2.) Registrar-General may show cause	..					
	(3.) Court may direct question of fact to be tried	..					
	(4.) Court may order production of papers	..					
	(5.) Form of issue	..					
	(6.) Order after trial of issue	..					
	(7.) Effect of order	..					
	(8.) Treasurer to pay compensation, &c., on production of order	..					
214	Assurance Fund not liable where same land included in two or more grants from Crown	..	124	202	133	185	cf. 196
215	But claim may be enforced against the Crown under Act No. 6 of 1853	C. 126, 127	C. 122	C. 217	C. 130	C. 187	C. 211
216	Limitation of actions and proceedings for compensation to a period of 20 years (C. actions for recovery of land; s. 251 <i>post</i>)	cf. 21	cf. 122	cf. 217	cf. 130	cf. 188	cf. 211
217	If plaintiff or claimant guilty of laches, action or proceeding fails	cf. 127	cf. 123	cf. 201	cf. 132	cf. 182, <i>et seq.</i>	cf. 195
218	Payments out of Assurance Fund, when deemed to be paid on account of person primarily liable	cf. 127	cf. 123	cf. 201	cf. 132	cf. 182, <i>et seq.</i>	cf. 195
219	Moneys paid may be recovered from his estate	..				cf. 182, <i>et seq.</i>	cf. 195
	Or judgment may be signed against him by Registrar-General	cf. 127	cf. 123	cf. 201	cf. 132		
220	PART XIX.—SPECIAL POWERS AND DUTIES OF REGISTRAR-GENERAL Special powers of Registrar-General	11 (1), (2)	11 (1), (2)	35, 186	11 (1), (2)	175 (1)	cf. 33, 180
	(1.) To compel production of documents and examine persons interested	11 (3)	11 (3)	194	11 (3)	175 (5)	188 (1)
	(2.) To administer oaths	11 (2)	11 (2)	..	11 (2)	..	..
	(3.) To summon person having possession of duplicate certificate of title or other instrument	..					
	(4.) To correct errors in Register and instruments	11 (4)	11 (4)	194	11 (4)	68	188 (2)
	(5.) To enter caveats on behalf of Crown or persons under disability, &c.	11 (5)	11 (5)	194	11 (5)	175 (4)	188 (3)
	(6.) To withdraw certain caveats on payment of money	..					
	(7.) To alter forms of instruments	9	90	187	92	213	cf. 181
	(8.) To require map to be deposited by applicant or proprietor	120	101	..	104	171 <i>et seq.</i>	cf. 166
	(9.) To dispense with the production of duplicate certificates of titles or other instruments in certain cases	95	91	80	93	38	74
221	Applicant or proprietor may summon Registrar-General to show cause if dissatisfied	cf. 27	107	209, 210	110	191, 192	203
222	Hearing of summonses	cf. 27	107	209, 210	110	cf. 193, 194	203

COMPARATIVE TABLES OF STATUTES.—TABLE IV.

South Australia.	SUBJECT MATTER OF SECTION.	Queens- land.	New South Wales.	Victoria.	Tasmania.	New Zealand.	Western Australia.
<i>Act of</i> 1886. 223	Registrar-General may state special case for opinion of Court	cf. 14	cf. 108	cf. 199	cf. 111	cf. 195, <i>et seq.</i>	cf. 193
224	PART XX.—PROCEDURE AND PENALTIES						
225	Ordinary rules of Court and Appeal Rules to apply	..	..	..	..	..	..
226	Provided that judges may make rules for matters under the Act	..	..	..	..	..	..
227	Scale of fees may be regulated by judges. (And <i>see ante</i> , s. 22)	..	..	..	..	..	..
228	Form of summons by Registrar-General. (And <i>see s. 60, ante</i>)	..	..	..	..	..	..
229	On refusal to comply with such summons Registrar-General may apply to judge	..	..	..	..	..	..
230	Declarations, before whom to be made ..	..	..	..	..	..	..
231	Felonies under the Act ..	..	..	..	..	..	..
232	Perjury under the Act ..	..	..	..	..	..	..
	Punishment of felony and perjury ..	..	..	..	..	..	..
	Penalty for certifying incorrect instruments ..	..	..	..	..	..	..
233	Certain fraudulent Acts to be misdemeanours ..	..	..	..	..	..	..
234	Instrument or entry procured or made by fraud to be void	..	..	..	..	..	..
235	Penalties recoverable before justices ..	..	..	..	..	..	..
236	Proceedings, how conducted ..	..	..	..	..	..	..
237	Process in default of payment ..	..	..	..	..	..	..
238	Appeal from conviction ..	..	..	..	..	..	..
239	Upon hearing of appeal, special case may be stated	..	..	..	..	..	..
240	Conviction not to affect civil remedy ..	..	..	..	..	..	..
241	PART XXI.—MISCELLANEOUS						
242	Scale of maps or plans deposited	..	..	..	..	..	..
243	Every certificate of title shall have plan in margin, showing measurements, or refer to plan deposited showing such measurements. (<i>See vide Act of 1887, s. 2, post</i>)	..	..	..	..	..	..
	Surveyors to be licensed ..	..	..	..	..	..	..
244	In cases of persons under disability guardian or committee may act	..	..	..	..	..	..
245	Where no guardian or committee, &c., Court may appoint one	..	..	..	..	..	..
246	Unregistered instruments confer claim to registration. ..	..	..	..	..	..	..
247	Informal documents may be registered in certain cases (<i>See s. 54, ante</i>)

APPENDIX.

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COMPARATIVE TABLES OF STATUTES.—TABLE IV.

South Australia.	SUBJECT MATTER OF SECTION.	Queens- land.	New South Wales.	Victoria.	Tasmania.	New Zealand.	Western Australia.
<i>Act of 1887.</i>							
s. 1	Short Title ..	..	..	..	..	..	..
2	Dimensions, &c., of closed road or reserve need not be stated, except in certain cases. (<i>See</i> Principal Act, s. 242)	..	..	..	..	..	..
3	Application of Act ..	..	..	..	..	..	..
<i>Act of 1893.</i>							
s. 1	Short Title ..	..	..	..	..	..	..
2	Where sale by encumbrancee, provision for investment and application of moneys not yet due to him. (Adding to Principal Act, s. 135)	..	..	..	..	..	..
3	Covenant to pay to be implied in every encumbrance ..	..	..	..	..	..	..
4	Transfer of Crown lease to be made by separate instrument, and not by endorsement. (<i>See</i> Principal Act, s. 99, <i>supra</i>)	..	..	..	..	..	..
5	Section 2, <i>supra</i> , is retrospective ..	..	..	..	..	..	..

COMPARATIVE TABLES OF STATUTES.—TABLE V.

Tasmania.	SUBJECT MATTER OF SECTION.	Queens-land.	New South Wales.	Victoria.	South Australia.	New Zealand.	Western Australia.
<i>Act of 1862.</i>							
1	Laws inconsistent not to apply to lands under Act	1	1	3	6	..	3
2	Short Title ..	..	..	..	..	..	..
3	Interpretation { (a) Meaning of terms	..	..	4	3	2	4
4	(See Act of { (b) Words of limitation unnecessary	3	3	88	76	214	81
5	1863, s. 1) { (c) Effect of variation of scheduled forms by Registrar. (See s. 92, post)	..	..	240	cf. 275	215	238
6	Office of Recorder of Titles ..	cf. 5	..	..	..	..	..
7	Appointment of Commissioners. (Amended by Act of 1863, s. 1) ..	cf. 12	6	cf. 5, 7	cf. 13, 14, 15	cf. 4	..
8	Appointment of Deputy-Recorder, &c. ..	Reg. Tit. Act of 1884, s. 3	cf. 5	cf. 8	cf. 13-15	cf. 4	..
9-10	Oaths of office	7, 8	10	..	..	..	..
11	Documents purporting to be sealed or signed by Recorder, &c., prima facie evidence. (See s. 91 post)	11 (1)	11 (1)	cf. 35, 186	220 (1)	175 (1)	cf. 33, 180
12	Repealed by Real Property Act 1863, s. 11	(2)	(2)	186	(1) (3)	..	cf. 180
13	Powers of Recorder (1) To inspect documents ..	(3)	(3)	194 (1)	(2)	(5)	188 (1)
14	(2) To summon witnesses ..	(4)	(4)	(2)	(4)	(4)	188 (2)
15	(3) To administer oaths ..	(5)	(5)	(3)	(5)	..	188 (3)
16	(4) To correct errors ..	cf. 4	cf. 8	cf. 11	18	cf. 4	..
17	(5) To enter caveats ..	..	..	..	..	..	..
18	Deputy-Recorder may act for Recorder ..	17	14	..	29	19	cf. 33
19	Repealed by Real Property Act 1863, s. 11	19	16	cf. 23	32, 33	cf. 21	cf. 21, 22
20	Applicant to deposit instruments of title and to furnish abstract if required ..	20	17	cf. 23	32, 34	cf. 23	cf. 23
21	Repealed by Real Property Act 1863, s. 11	21	18	24, 25	35	24	cf. 23
22	Where applicant is not original grantee, but there are no encumbrances, advertisement necessary	22	19	27	36, 37	25	25
23	Recorder to give notice to persons interested, in accordance with direction of Commissioners or order of Supreme Court, by personal service or advertisement	23	20	..	cf. 38	cf. 26	..
24	If no caveat, lands brought under Act. (Amended by Act of 1863, s. 1)	24	21	..	39	137	30
25	On failure of service of notice, Recorder shall report case to Commissioners. (See Act of 1863, s. 1)	25	22	32	39	141	31
26	Parties interested may lodge caveat	26	23	33	40	145	cf. 32
27	If caveat received in time limited, proceedings stayed	27	24	34	cf. 45	145	cf. 32
28	Caveats lapse within three months, unless proceedings taken	28	25	36	41	27	34
29	Application may be withdrawn and title deeds returned	29	26	cf. 37	42	28	cf. 35
30	Upon issue of certificate of title, title deeds cancelled and retained by Recorder, unless they relate to other land	cf. 30	25	..	..	..	..

COMPARATIVE TABLES OF STATUTES.—TABLE V.

Tasmania.	SUBJECT MATTER OF SECTION.	Queensland.	New South Wales.	Victoria.	South Australia.	New Zealand.	Western Australia.
27	How certificate of title issued where applicant dies before issue. (And <i>see</i> as to Crown grant, Act of 1886, s. 10)	31	26	40	43	..	cf. 38
28	Percentage in the pound to be levied for assurance of title. (And <i>see</i> Act of 1893, s. 14 [4], <i>post</i>)	41	27	42, 43,	201	177	40, <i>see</i> 14
29	Assurance Fund to be invested in Government securities ..	42	28	200	cf. 202	cf. 177	194
30	Reversion expectant on lease not extinguished by bringing land under Act. (Amended by Act of 1863, s. 1)	47	29	cf. 45	46	29	cf. 70
31	Recorder to keep Register Book	32	30	44	47	31	48
32	Every certificate of title to be in duplicate; one to be bound up in Register Book, the other delivered to person entitled. (Amended by Act of 1863, s. 1; further amended by Act of 1893, s. 8, <i>post</i>)	33	31	44	48, 49	31	48, 59
33	Certificate of title conclusive evidence of title ..	33	33	69	80	65	63
34	Grants, certificates, and other instruments, when deemed to be registered ..	34	34	54	50	32	52
35	Instruments to be in duplicate ..	35	..	cf. 55	C. 55	..	53
	Instruments take priority according to date of registration ..	Act of 1877, s. 12	..	cf. 54	56	33	53
	Instruments, when registered, deemed to be embodied in register book ..	35	..	..	..	..	..
	Instruments, when registered, have effect of deed ..	..	..	cf. 92	57	..	cf. 53
36	General covenants to be implied in instruments. (Amended by Act of 1863, s. 1)	67	36	..	261	156	..
37	What memorial consists of ..	34	37	60	51	34	56
38	Memorial to be recorded on duplicate grant or certificate, or other instrument, and to be receivable as evidence ..	45	38	61	cf. 52, 53	35	cf. 57
39	Instruments only effectual to pass estate or interest when registered ..	43	39	63	67	36	58
40	Estate of registered proprietor paramount, subject to certain exceptions. (Added to by s. 4 of Act of 1890, <i>post</i> . <i>Words inserted</i> , Act of 1893, s. 9, <i>post</i>)	cf. 44	cf. 40	cf. 74	cf. 69	cf. 55	cf. 68
41	Instruments not to be registered unless in accordance with prescribed forms ..	..	41	..	..	..	..
42	Mode of transfer of land and of creation of easement ..	cf. 48	cf. 42	cf. 89	96	cf. 76	cf. 82
43	Easements, &c., to be registered by entry of memorial on grant or certificate of title of dominant tenement ..	51	43	70 to 72, 75, 96	cf. 81	61	cf. 66
44	If fee-simple or fee-tail transferred, grant or certificate of title delivered up and cancelled as to all the land or the part transferred. (And <i>see</i> Act of 1886, s. 12, <i>et seq.</i>)	cf. 49	cf. 44	cf. 93	cf. 98, 99	cf. 78	cf. 86
45	Cancelled grant or certificate of title retained, and new one issued to purchaser or transferor if required. (And <i>see</i> Act of 1886, ss. 12, <i>et seq.</i>)	50	45	cf. 93	100	79	..
46	Transferee of land subject to mortgage or encumbrance to indemnify transferor ..	68	46	95	97	81	cf. 88
47	Mode of leasing lands for life or term exceeding three years ..	52	49	cf. 99	cf. 116	cf. 86	cf. 91
48	Lease may be surrendered by endorsement by lessee with concurrence of lessor ..	54	50	106	120, 123	89	98

		cf. 70, and Act of 1877, s. 31	51	f. 100	cf. 124	cf. 90	cf. 92
49	Covenants by lessee to be implied in every lease. (Amended by Act of 1863, s. 1) ..						
50	Powers of lessor to be implied in every lease. (Amended by Act of 1893, s. 13, <i>post</i>) ..						
51	Recorder to note particulars of re-entry by proceedings at law and cancel lease if delivered to him	71 72	52 cf. 53	101 cf. 104 and 112	125 cf. 126	91 cf. 92	93 cf. 96
52	Mode of mortgaging or encumbering lands	55	54	113	128, 129	93	105
53	Memorandum of mortgage is an encumbrance only, and not a transfer. (Amended by Act of 1863, s. 1)	60	{ 55	{ 114	{ 132	94	106
54	Remedy in case of default (Amended by Act of 1863, s. 1) ..	57	56	114, <i>et seq.</i>	98	99, <i>et seq.</i>	108, 109
55	Power of sale and appropriation of proceeds. (Amended by Act of 1863, s. 1) ..	57					
56	Registration of transfer executed by mortgagee or encumbrance vests land in purchaser	58	57	118	136	102	110
57	In case of default, mortgagee or encumbrance may enter into possession for receiving rents, &c., or may distrain upon tenant, or may make application to recover land, or may foreclose. (See ss. 116-121, <i>post</i>)	cf. 60	cf. 58	119	137, <i>et seq.</i>	cf. 96, 97, 111	111
58	Power of mortgagee or encumbrance to distrain on tenant	cf. 61	cf. 59	120	138	97	112
59	Mortgagee or encumbrance of leasehold entering into possession liable to lessor	62	60	122	139	113	114
60	Mode of discharging mortgages or encumbrances by payment	63	61	131	143, 144	108	123
61	Discharge of annuity, &c., by death or other event	63	62	132	145	110	125
62	Mortgage money may be paid to Treasurer if mortgagee absent from colony ..	64	63	133	146, 147	109	126
63	Covenants by mortgagee to be implied in every memorandum of mortgage ..	69	64	131	130	95	113
64	Transfer of mortgage, encumbrance, or lease	65	cf. 47	89	150, 151	82, 83	88
65	Such transfer includes transfer of right to sue under the instrument	66	48	90	151	83	88
66	Abbreviated forms for expressing covenants by lessee or mortgagee to be as effectual as if such covenants were set forth at length	73	65	cf. 102, 123	265	157	cf. 94
67	No entry of trusts to be made in Register	79	{ 66	{ 57	{ 162	{ 122	{ 55
68	Copy of instruments declaring trusts may be deposited	78					
69	Registered proprietor may make Recorder a trustee	80	67	20	163	127	cf. 61
70	Effect of words "no survivorship"	81	68	66	165	126	..
71	If such words on transfer or other instrument, they shall be on certificate of title	80	69	150	165	126	cf. 61, 62
72	Judge's order nullifies effect of such words	104			155, 156	cf. 152, 163	cf. 143
73	Registration of power of attorney given by a registered proprietor	105	70	C. 153	..	129, 130	..
74	Registered proprietor of land may obtain registration abstract to deal with land when beyond the colony	106	71	154	..	131, 132	..
75	Mode of procedure under registration abstract	107	72	155	..	134	..
76	Proceedings upon delivery of registration abstract to Recorder	107	73	156	..	136	..
77	Procedure where registration abstract is lost, &c.	108	74	150	157	154	cf. 143
78	Revocation of power of attorney	86	75	236	170, 171, 180	115, 117	cf. 234
79	Transmission by bankruptcy or insolvency. Upon entry of appointment, assignee deemed proprietor, but subject to equities						

COMPARATIVE TABLES OF STATUTES.—TABLE V.

Tasmania.	SUBJECT MATTER OF SECTION.	Queensland.	New South Wales.	Victoria.	South Australia.	New Zealand.	Western Australia.
<i>Act of 1862.</i>							
77	On disclaimer by trustee of insolvent lessee, mortgagee of lease may be registered as transferee; otherwise lease deemed to be surrendered	..	76	..	cf. 178, (2)	..	97
78	Marriage of female registered proprietor to be certified to Recorder ..	cf. 87	cf. 77	cf. 228	cf. 189, 190	cf. 121, 165	226
79	Transmission of mortgage, encumbrance, or lease on death of registered proprietor ..	88	78	138	cf. 175, <i>et seq.</i>	cf. 115, <i>et seq.</i>	132
80	Transmission of land on death of registered proprietor. (<i>See Act of 1886, s. 18</i>) ..	89, and Act of 1877, s. 32	79, and Act of 1878, ss. 6-8	225	C. 175, <i>et seq.</i>	cf. 115, <i>et seq.</i>	cf. 219
81	Heir-at-law, devisee, &c., may apply for transmission Application to be advertised as if no caveat lodged; applicant registered as proprietor. (<i>Sed vide Act of 1886, s. 18</i>)	cf. 89	80	226	C. 175, <i>et seq.</i>	cf. 117	220
82	Caveat may be lodged to prevent any dealing with land under the Acts	98	81	144	191 (1)	138	137
83	Recorder to notify such caveat to parties, who may summon caveator to show cause ..	99	82	145	191 (2), (4)	143, 144	138
	Caveats, with certain exceptions, lapse fourteen days after notice to caveator of intended dealing	C. Act of 1877, s. 39	82	145	191 (6)	146	138
84	Effect of such caveat. (<i>Sed vide Act of 1893, s. 5</i>)	101	83	146	191 (3)	142	139
85	Action against person lodging caveat without reasonable cause. (Repealed, and new section substituted, Act of 1893, s. 6)	103	84	cf. 147	191 (10), (12)	147	cf. 140
86	Registered proprietor may vest estate in his wife (or, if married woman, in her husband), or in himself jointly with others without uses or re-assignment	82	85	91	111	80	cf. 84
87	Joint proprietors to hold as joint tenants	40	cf. 86	65	cf. 74	cf. 54, 62	60
88	Tenants in common to receive separate certificates. (Repealed by Act of 1886, s. 37)	cf. 38	87	229	188	cf. 80,	cf. 227
89	Remainderman or reversioner may be registered as such. (<i>See Act of 1886, s. 16</i>)	cf. 36	88	cf. 227	cf. 75	cf. 80,	cf. 221
90	Implied covenants and powers may be negatived or modified	76	89	137	262	158	131
	Implied covenant may be pleaded as if expressly made	74			263	159	
	Implied covenant to have same force and effect as if expressly made	75			263	158	
	Implied covenants to be deemed several and not joint	74	7	10	C. 264	C. 168	C. 131
	Recorder to have seal; instrument bearing seal receivable in evidence	8			21	9	10
91	Recorder may alter forms of instruments	9	90	187	220 (7)	cf. 213	cf. 181
92	Recorder may dispense with production of grant certificate or other instrument in certain cases	cf. 95	91	80	220 (9)	cf. 38	74

		C. 91	C. 92, and Act of 1878, s. 13	C. 139	C. 105, et seq.	..	C. 133
94	Writ of execution does not bind land until registered. (Amended by Act of 1863, s. 1; new section substituted, Act of 1893, s. 16)						
95	Seal of corporation substituted for signature	114	93	136	270	166	130
96-98	Repealed by Act of 1886, s. 37						
99	Upon surrender of existing grants or certificates proprietor may obtain a single certificate of title for all land included therein, and <i>vice versa</i>	94	97	cf. 77	78	74	cf. 71
100	Provisional certificate of title issued where grant or certificate of title lost	117	98	81, 84	79	75	75
101-102	Repealed by Act of 1863, s. 11	119	100	cf. 172	101	cf. 171, et seq.	See 15, cf. 166
103	Registered proprietor subdividing land shall deposit map				220 (8)	cf. 171, et seq.	cf. 166
104	Recorder may require map or plan to be deposited	120	101	..	241	39	239
105	Certified copy obtainable and <i>prima facie</i> evidence of contents of instrument Searching the Register. (Amended by Act of 1863, s. 1)	122	102	241	..	40	239
106	Applicant for registration or his solicitor to certify correctness of instrument. (And see Act of 1885, s. 30)	121	103	241	65		
107	Penalty for false certificate	139	104	..	273, 232	168	..
108	Fees to be charged. (Amended by Act of 1867, s. 1)	140	105	197	22	211	191
109	Recorder to pay moneys into Treasury, and Treasurer to pay absent mortgagees and other persons entitled on a proper warrant. (Amended by Act of 1863, s. 1)	141	106	196, 200	23	..	190
110	Applicant or proprietor may summon Recorder to show cause if dissatisfied. (Extended by Act of 1893, s. 21)	cf. 27	107	209, 210, and Act of 1885	221, 222	191, et seq.	203
111	Recorder may, by direction of Commissioners, state special case for Supreme Court	cf. 14	108	cf. 199	cf. 223	cf. 195, et seq.	cf. 193
112	Vesting order of Supreme Court to take effect when registered. (Amended by Act of 1893, s. 15, <i>post</i> . And see Act of 1893, s. 14, <i>post</i>)	83	109	188	184	85	182
113	Action may be brought or defended by beneficiary in name of trustee, if indemnity given	84	110	231	185	128	229
114	Except in case of fraud, no person dealing with registered proprietor to be affected by mere notice	cf. 109	111	140	186, 187	189	134
115	Certificate of title to be conclusive proof of title of registered proprietor in suit by him for specific performance. (Amended by Act of 1863, s. 1)	96	112	73	..	..	cf. 67
116	Mortgagee, encumbrancee, or lessor may, in certain cases, obtain order for possession .. .. .	..	..	..	cf. 192, et seq.	..	..
117	Such proceedings not to bar right of mortgagee of a leasehold						
118	Upon person entitled to redeem mortgaged or encumbered land paying amount due, mortgage or encumbrance to be discharged						
119	When tenant holds over, landlord may obtain possession by summons						
120	Summons, how served						
121	Mortgagee may apply to Recorder for an order for foreclosure .. .. .	..	113	129	140	..	121

COMPARATIVE TABLES OF STATUTES.—TABLE V.

Tasmania.	SUBJECT MATTER OF SECTION.	Queens-land.	New South Wales.	Victoria.	South Australia.	New Zealand.	Western Australia.
Act of 1862.							
122	Order made by Recorder after advertisement offering land for sale vests land in mortgagees	..	114	180	141, 142	..	122
123	<i>Repealed by Act of 1863, s. 11</i> ..	123	115	205	C. 192, <i>et seq.</i>	56	cf. 199
124	No action of ejectment against registered proprietor, except in certain cases..	cf. 126	117	cf. 207	cf. 203, <i>et seq.</i>	..	cf. 201
125	Person deprived of land may, in certain cases, bring action against nominal defendant, and in other cases against person blamable. (Amended by Act of 1863, s. 1) ..	..	117	207	204	..	201
	Except in cases of fraud or error, such person ceases to be liable after <i>bonâ fide</i> transfer for value	..	cf. 117	207	cf. 205	..	201
	In last-mentioned case, damages recoverable from Assurance Fund. (And <i>see</i> Act of 1893, s. 7, <i>post</i>)	..	118	208	207	190	202
126	No action of ejectment, &c., nor for recovery of damages against <i>bonâ fide</i> purchaser for value	126	117	211, 212, 213	205, 206, 212	C. 178, <i>et seq.</i>	..
127	Where remedy ineffective, damages recoverable from Assurance Fund. (And <i>see</i> Act of 1893, s. 7, <i>post</i>)	cf. 128	119	211	cf. 208	178, 179	{ 205, cf. 210
128	Action against Recorder for misfeasance, &c., or by person deprived of land and barred of action for recovery	cf. 128	cf. 120	cf. 215	..	cf. 180	209
129	Notice of action to be given ..	129	120	215	..	181	cf. 211
130	Costs recoverable in name of recorder ..	cf. 126	122	217	C. 215	cf. 187	211
	Limitation of actions..	21	122	217	cf. 216	188	211
	Plaintiff in action for recovery, or for damages for deprivation of land, nonsuited if deprivation caused by bringing land under Act and he wilfully omitted to lodge caveat	..	..	..	..	..	..
131	Recorder's costs as trustee, how paid. (<i>See</i> s. 67, <i>ante</i>) ..	..	..	..	..	..	..
132	Recorder has remedy over to recoup Assurance Fund ..	cf. 127	123	201, 202	217, <i>et seq.</i>	182, <i>et seq.</i>	195
133	Assurance Fund not liable for breach of trust ..	42	124	202	211	185	196
	Nor in certain other cases ..	cf. 127	124	202	cf. 212, 214	cf. 185	196
134	Personal immunity of Recorder and officers	137	125	204	24	220	198
135	Certificate of title void as against person rightly in adverse possession of land when brought under Act, but valid against all other persons	..	..	..	69 (6)	67	..
136	Holder of instrument wrongly issued or retained may be summoned by Recorder to deliver up same. On his refusal, judge may issue warrant	cf. 130	126	82	60, 61	69, 70	cf. 76
137	Court may order delivery of instrument, and, if necessary, Recorder may issue new one	cf. 132	127	83	62, 63	71, 72	cf. 77
138	Upon recovery of land, &c., Court may order cancellation of instrument or entry and substitution of new one	124	128	206	cf. 64	73	200
139	Certain fraudulent acts to be misdemeanours ..	cf. 10	180	220	cf. 233	200	cf. 214
140	Forgery, &c., to be felony ..	cf. 142	132	221	cf. 229	cf. 201	cf. 215

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COMPARATIVE TABLES OF STATUTES.—TABLE V.

Tasmania.	SUBJECT MATTER OF SECTION.	Queensland.	New South Wales.	Victoria.	South Australia.	New Zealand.	Western Australia.
<i>Act of 1878 (No. 4.)</i>							
1	Power of executor to sell land charged with legacy	..	..	..	..	..	..
2	This Act only applies to land under Real Property Act	..	..	..	..	..	..
3	Acts to be read together ..	..	..	..	..	..	..
4	Short Title ..	..	..	..	..	..	..
<i>Act of 1886 (No. 5.)</i>							
1	Short Title ..	..	..	..	..	..	..
2	Interpretation ..	..	..	..	..	..	..
3	Application of Settled Land Act to lands under Real Property Act ..	..	..	..	..	..	..
4	Persons dealing with registered proprietor not bound to inquire whether land affected by Settled Land Act	..	..	..	..	..	..
5	Limitation in tail to pass the fee-simple	..	..	..	..	..	..
6	Where successive life estates are given to parent and child, with estate tail to grandchild, parent and child may bar entail as if estate tail were given to child	..	..	..	..	..	..
7	Estate tail under the Act to have same incidents as under the general law ..	..	..	..	..	..	..
8	Transferee from tenant in tail may be registered for the larger estate, which he can confer ..	..	..	..	..	..	..
9	Registration of Crown grant deemed enrolment of record ..	..	..	..	..	..	..
10	Crown grant may be issued like certificate of title in name of deceased person. (Adding to Principal Act, s. 27)	48, Vict., No. 9, s. 1	Act of 1873, s. 3	See note in a'Beckett's Tr. L. St., 2nd Edition, p. 73	..	..	..
11	Dealings may be registered before issue of Crown grant	..	99	79	112	77	73
12	Transfer by endorsement on grant or certificate of title where all lands transferred. (Words added and repealed, Act of 1898, s. 8, <i>post</i>)	Act of 1877, s. 16	Act of 1873, s. 2	94	99	cf. 86, 87	..
13	Grant or certificate may be returned endorsed to transferor if part only of land transferred ..	..	..	93	..	C. 78	..
14	If required by transferor, Recorder shall issue to him a certificate of title for the balance. (See Principal Act, s. 45)	..	..	93	..	79	..

15	Tenants in common may receive one certificate of title or several certificates, at their option. (Amending Principal Act, s. 87)	..	..	..	..	60
16	Remainderman or reversioner may have separate certificate of title, at his option. (Amending Principal Act, s. 89)	..	..	..	..	cf. 221
17	Transfer and mortgage may be registered contemporaneously	Act of 1877, s. 24	..	..	..	..
18	Other persons who may apply to be registered on transmission by death. (Adding to Principal Act, s. 80)	..	..	..	..	..
19	On application for transmission Commissioners may dispense with advertisements. (See Principal Act, s. 81)	..	..	..	..	..
20	Registration on transmission by endorsement .. .. .	..	..	..	..	..
21	Additional contribution to Assurance Fund in case of imperfect title .. .. .	..	..	..	..	..
22	Caveat may be lodged against report that applicant entitled to grant in equity and good conscience. (See Act of 1863, s. 6)	..	..	..	..	..
23	Caveat against dealing may be lodged by judgment creditor .. .. .	..	..	..	..	..
24	Land may be surrendered to the Crown by transfer, registration of which shall be equivalent to enrolment .. .. .	..	..	..	..	..
25	Mortgage, encumbrance, or lease may be extended by endorsement .. .. .	..	..	..	..	..
26	Extension to take effect for one year, unless other time specified .. .. .	..	..	..	..	..
27	Registration of extension .. .. .	..	..	..	..	..
28	Certificate of title containing statement that person named is entitled to easement is conclusive evidence of such statement .. .. .	..	..	..	..	..
29	Abbreviated form of words for creating right-of-way .. .. .	..	..	..	..	..
30	Extension of form C. of Principal Act to the setting forth of easements .. .. .	..	..	..	..	..
31	Attestation and proof of execution of instruments .. .. .	..	..	..	..	..
32	Corporations may appoint persons to sign certificate of correctness. (See Principal Act, s. 107)	..	..	..	..	..
33	Liquidator of company incorporated under <i>Companies Act</i> may be registered as proprietor .. .. .	..	..	..	..	..
34	Lease or sub-lease may be in triplicate .. .. .	..	..	..	..	..
35	Certain instruments need not be in duplicate .. .. .	..	..	..	..	..
36	Duly certified conveyancer may act as solicitor .. .. .	..	..	..	..	..
37	Fee on registration of transfer or transmission by endorsement
38	Amendment of Principal Act, s. 78
39	Repeal
40	Acts to be read together
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COMPARATIVE TABLES OF STATUTES.—TABLE V.

Tasmania.	SUBJECT MATTER OF SECTION.	Queensland.	New South Wales.	Victoria.	South Australia.	New Zealand.	Western Australia.
<i>Act of 1890 (No. 6.)</i>	<i>Whole Act repealed by Act of 1893, s. 9, post</i>	..	..	..	..	..	..
1	Short Title ..	..	..	..	..	..	..
2	Amendment of s. 40, of Principal Act by insertion of words "any public right-of-way"	..	..	..	..	..	..
3	All Real Property Acts to be read together	..	..	..	..	..	..
<i>Act of 1893 (No. 7.)</i>							
1	Short Title ..	..	..	..	..	..	..
2	Interpretation ..	..	..	..	..	..	..
3	APPLICATIONS TO BRING LAND UNDER ACT. Where applicant to bring land under Act claims by possession, notice of application to be posted on the land for one month	..	..	..	..	..	..
4	Title to land brought under Act, or grant of which issued subject to mortgage, to be held good in favor of mortgagee or purchaser after foreclosure or sale CAVEATS.	..	..	..	..	..	..
5	Caveat by beneficiary under will or settlement need not be removed (except in certain cases) to admit registration of dealing authorised thereunder, notwithstanding s. 84 of Principal Act	..	..	..	..	..	..
6	Remedy by summons (instead of action) against unreasonable caveator. (This section substituted for s. 85 of the Principal Act) ASSURANCE FUND.	cf. 103	cf. 84	147	cf. 191 (10), (12)	cf. 147	140
7	Recorder may compromise actions against the Assurance Fund CERTIFICATE OF TITLE, LEASES, AND SUB-LEASES.	..	..	214	210	180	208
8	Amendments of s. 32 of Principal Act, and of s. 12 of the Act of 1886 (No. 5)	..	..	..	..	..	..
9	Repeal of Act of 1890. (<i>Real Property Act, No. 6, ante</i>)	..	..	..	..	..	..
10	Certain words inserted in Principal Act, s. 40	..	..	..	..	..	..
11	Lessee's certificate of title to refer to lease and be cancelled on expiration of lease	..	..	..	..	..	..
12	Memorial of dealing with lease not to be entered on lessor's certificate of title, except as to re-entry, surrender, or forfeiture Provisions of Principal Act and this Act as to leases apply, with necessary modifications, to sub-leases	..	..	110	..	..	102
13	Amendment of s. 50 (2) of Principal Act VESTING ORDERS.	..	..	..	..	..	..
14	Recorder, after one month's notice, to make vesting order where purchase completed and transfer not obtainable Contribution payable to Assurance Fund in such cases	..	..	..	..	..	..

s. 15	Verbal amendment of Principal Act, s. 112 EXECUTIONS AND ORDERS FOR SALE.	..	..	..	..	..
16	New section substituted for Principal Act, s. 94	..	..	..	..	..
17	Copy of <i>n. /a.</i> must be registered before transfer from Sheriff produced for registration PRODUCTION OF TITLE.	..	..	..	..	..
18	Judge may order production of instruments required by Recorder	..	..	..	..	..
19	Person refusing to comply with order may be committed	..	..	..	..	..
	MISCELLANEOUS.					
20	Notices to be given by registered letter, unless otherwise directed	..	..	..	..	..
21	Dissatisfied proprietor may summon Recorder to show cause in all cases. Act, s. 110)	..	..	..	..	..
22	Repeals not to affect accrued rights	..	..	..	..	..
23	All Real Property Acts to be read together	..	..	..	..	..

COMPARATIVE TABLES OF STATUTES.—TABLE VI.

Vic- toria.	SUBJECT MATTER OF SECTIONS.	Queens- land.	New South Wales.	South Australia.	Tasmania.	New Zealand.	Western Australia.
Act of 1890.							
1	Short Title; commencement and division	..	..	..	..	..	1
2	Repeal of certain acts mentioned in first schedule	..	..	..	..	..	2
3	Laws inconsistent not to apply to land under Act	1	1	6	1	..	3
4	Interpretation clause; meaning of terms	3	3	3	3	2	4
	PART I.—APPOINTMENT OF OFFICERS.						
5	Commissioner of Titles	..	..	..	..	..	5
6	Appointment of deputy officers	..	..	..	..	..	6
7	Examiners of Titles and Registrar of Titles	..	..	..	..	..	7
8	Appointment of other, and removal of all officers	..	..	..	..	..	8
9	Signatures of Commissioner, Registrar, and Assistant-Registrar to be judicially noticed	..	..	..	..	..	9
10	Registrar's seal of office	8	7	21	8, 91	9	10
11	Powers of Assistant-Registrar	..	..	..	..	..	11
12	Commissioner or Examiner of Titles not to practice as barrister or solicitor	..	..	..	..	..	12
13	Oath of Registrar and Assistant-Registrar	..	..	..	..	..	13
14	Appointment and oath of sworn valuers	Act of 1877, ss. 6-7 See 112	3, 129*	See 201	See 28	210	14
15	Governor-in-Council may appoint persons to take acknowledgments by married woman	..	See 96	See 256	..	C. 165	..
16	Surveyors not to be licensed without qualification certificate	..	..	..	..	..	15
17	Surveyor's license to be subject to conditions and to be revocable	..	..	..	..	..	15, 17
18	Notice of revocation of license to be published in the <i>Gazette</i>	..	..	..	..	..	15
	PART II.—BRINGING LAND UNDER ACT.						
19	Grants in fee, or for years, of Crown lands, which were unalienated at commencement of Act, shall be issued under the Act	C. 15	C. 12	C. 7, 26	C. Act of 1863, s. 3, 7	C. 10	18
20	Grant in fee to joint tenants for public purposes to be endorsed with words "no survivorship"						
21	What lands may be brought under Act (land alienated in fee before the commencement of the original Real Property Act (25 Vic., No. 140))	cf. 16	13, and Act of 1878, ss. 2-3	27	Act of 1863, s. 4	cf. 17-18	cf. 20
22	What persons may apply to bring lands under Act Where no transaction affecting land has been registered under general law, certificate of title issued at once	cf. 18	cf. 15	cf. 32	cf. Act of 1863, s. 5	cf. 22	21
23	Where transaction has been registered, but parties interested consent to application, or encumbrances (not being mortgages) are capable of notification under the Act, advertisement necessary	cf. 19, 20	cf. 16, 17	cf. 32-34	cf. 17, 18	cf. 21, 23	22

24	Notice of application ; to whom given, and how ..	..	..	..	cf. 21	cf. 18	cf. 35	cf. 19	cf. 24	23
25	Notices of application to bring land under Act ; how sent, and to whom	..	..	..	..	..	..	..	..	24
26	Persons claiming title by possession to post notice of application on land	..	..	..	..	..	..	..	..	24
27	If no caveat received, land brought under Act ..	..	..	..	22	19	36, 37	20	25	26
28	Land <i>bonâ fide</i> occupied by applicant may be brought under Act by a different description from that in the documents of title, on special application	..	..	..	..	..	..	..	..	27
29	Application to bring land under Act, or to amend certificate may be granted as to land occupied under, but not described in, the documents of title or certificate	..	..	..	..	..	..	..	..	28
30	Upon application to bring land under Act, or to amend certificate, title may be given to excess of land occupied under Crown grant over land described in Crown grant	..	..	..	..	..	..	..	..	29
31	Excess of land in a subdivided Crown section may be apportioned between different owners or proprietors, or may be subject of a title gained by adverse possession	..	..	..	23	21	39	22	187	30
32	Parties interested may lodge caveat ..	..	..	..	..	..	..	..	..	31
33	Contents of caveat ..	..	..	..	24	23	40	23	141	..
34	If caveat received, proceedings suspended ..	..	..	..	cf. 99	cf. 92	..	..	..	..
35	Proceedings for removal of caveat ..	..	..	..	cf. 25,	cf. 23	45	cf. 24	of 145,	32
36	Caveat lapses in one month unless proceedings taken	..	..	..	Act of 1877,	..	..	..	149	..
37	Lapsed caveat cannot be renewed	..	..	..	s. 40	..	..	..	..	..
38	Judge may require production of title deeds in support of an application to bring land under Act	..	..	..	cf. 11	cf. 11	cf. 220	cf. 11	cf. 175	33
39	Application may be withdrawn and title deeds returned ..	..	..	..	(1)	(1)	(1)	(1)	(1)	34
40	Caveator entitled to compensation ..	..	..	..	29	24	41	25	27	..
41	Deeds to be endorsed when part of land included therein is brought under Act and cancelled, and retained when all is brought under	..	..	..	..	..	..	..	..	..
42	Upon bringing land under Act subsisting lease to be endorsed and returned ..	..	..	..	cf. 30	cf. 25	cf. 42	cf. 26	cf. 28	35
43	Registrar to keep "Record Book" of documents produced in support of application granted to bring lands under the Act	..	..	..	..	..	..	..	..	36
44	How certificate of title issued when applicant dies before issue ..	..	..	..	..	..	..	..	..	..
45	Leaseholds (of which at least ten years are unexpired) may be brought under Act	..	..	..	31	26	43	27	cf. 64	38
46	Percentage in the pound to be levied for assurance of title ..	..	..	..	..	cf. 13	..	..	..	39
47	On bringing leasehold under Act, fees paid to be based on value of leasehold	..	..	..	41	27	201	28	177	40
48	Production of lease may be dispensed with on bringing land under the Act ..	..	..	..	..	..	..	..	..	..
49	Certain memorials under previous Registration Acts to be sufficient evidence of conveyances in fee	..	..	..	..	..	..	..	..	..
50	No fee payable for use of memorial in case of possession for fifteen years ..	..	..	..	..	..	..	..	..	..
51	Additional indemnity for imperfect title. (And see s. 203 <i>post</i>) ..	..	..	..	..	..	..	..	..	45
52	Title to land sold under an order or decree in Equity may be deemed sufficient	..	..	..	..	..	..	..	..	..
53	Old roads ; how brought under Act and transferred by municipality ..	..	..	..	..	..	..	..	..	..

COMPARATIVE TABLES OF STATUTES.—TABLE VI.

Vic- toria.	SUBJECT MATTER OF SECTION.	Queens- land.	New South Wales.	South Australia.	Tasmania	New Zealand.	Western Australia.
<i>Act of 1890.</i>							
50	PART III.—CERTIFICATES OF TITLE AND REGISTRATION. Registrar to keep Register Book and bind up therein one duplicate grant or certificate of title and deliver the other to person entitled. All dealings notified in order of priority	32, 33	30, 31	47-49	31, 32	31-33	48
51	Every certificate of title to be on parchment	..	..	..	..	..	49
52	One certificate of title may be issued in some instances for land not contiguous	..	..	..	..	..	50
53	Area of land less than one acre need not be stated in certificate of title	..	..	..	..	..	51
54	Where consideration of transfer is not money, true consideration must be stated	..	..	..	..	..	52
55	Receipt may be required for duplicate grants or certificates of title to prevent personation	..	..	..	..	..	53
	Grants, certificates and other instruments when deemed to be registered	34 cf. 35, Act of 1877, 12-14	34 cf. 35	50 C. 55, cf. 56	34 cf. 35	32 cf. 33	51
	Instruments (except transfer, where a new certificate of title is required) may be in duplicate	..	..	..	..	..	52
	Instruments to be registered in order of production	..	..	..	..	..	53
	Instruments take priority according to registration	..	..	..	..	..	54
	One duplicate to be bound in Register Book, and the other delivered to person entitled	..	..	..	..	..	55
56	Leases and mortgages may be in triplicate	..	..	..	..	..	54
57	No notice of trusts to be entered in Register Book	..	..	..	..	..	55
58	Documents declaring trusts may be deposited but not registered	..	..	..	..	..	56
59	Power to make transfers to and issue certificate of title to the trustees of registered trusts as such	..	..	..	..	..	57
60	Instruments affecting land under Act not to be registered under Registration of Deeds Act	..	..	..	..	..	58
61	What memorial consists of	34 cf. 45	37 cf. 38	51 cf. 52, 53	37 cf. 38	34 cf. 35	56
62	Memorial of instrument to be endorsed on duplicate grant or certificate of title, &c., and to be receivable as evidence	..	..	..	..	..	57
63	Seal of office substituted for signature of Registrar in certain cases	..	..	..	..	..	58
64	Instruments only effectual to pass estate or interest when registered	..	..	..	..	..	59
65	When two conflicting instruments presented at same time, that which is accompanied by grant or certificate of title shall be registered	43	39	67	39	36	60
	Proprietor entitled to certificate of title	cf. 33	cf. 31	cf. 73, 77	cf. 32	cf. 58, 59	59
	If certificate of title issued to person under disability particulars to be stated	..	..	..	..	..	60
	Joint proprietors to hold as joint tenants	cf. 40	cf. 86	74	cf. 87, and Act of 1886, s. 15	cf. 54, 62	60
66	Tenants in common may receive one or several certificates	..	..	..	..	..	61
	Words "no survivorship" may be endorsed on transfer or lease, or entered on instrument by Registrar, at request of joint proprietors; effect of such words	cf. 80, 81	cf. 67, 68	cf. 163- 165	cf. 68, 69	cf. 123- 126	61

67	Notice to be published before order obtained nullifying effect of such words ..	..	..	..	cf. 68	cf. 166	cf. 69	cf. 126	62
68	In case of Friendly Society, advertisement may be dispensed with ..	..	..	..	..	..	..	..	62
69	Certificate of title to be conclusive evidence of title .....	..	..	..	33	80	33	..	63
70	Statement in certificate of title that person named is entitled to easement to be conclusive evidence ..	..	..	..	..	..	..	..	64
71	Short form for creation of easement .. ..	..	..	..	..	..	..	..	65
72	Easements may be notified on certificate of title of land ..	cf. 51	..	..	cf. 43	cf. 81	cf. 43	cf. 61	66
73	Certificate or title to be conclusive evidence in suit for specific performance or action for damages ..	cf. 96	..	..	cf. 112	..	cf. 115	..	67
74	Estate of registered proprietor paramount, subject to certain exceptions ..	cf. 44	..	..	cf. 40	cf. 69	cf. 40	cf. 55	cf. 68
75	Easements existing under deed or writing to be notified as encumbrances; also building condition, condition against alienation, &c. ..	..	..	..	..	..	..	..	cf. 69
76	Registered proprietor deemed seized of reversion expectant on lease ..	cf. 47	..	..	cf. 29	cf. 46	cf. 30	cf. 29	70
77	Upon surrender of existing grants or certificates proprietor may obtain a single certificate of title for all land included therein ..	cf. 94	..	..	cf. 37	cf. 78	cf. 99	cf. 74	71
78	References showing history of land to be kept in Register Book ..	..	..	..	..	..	..	..	72
79	Dealings may be registered prior to issue of Crown grant ..	..	..	..	99	112	Act of 1886, s. 11	..	cf. 73
80	Registrar may dispense with production of duplicate grant, certificate, or other instrument in certain cases ..	cf. 95	..	..	91	220 (9)	93	cf. 38	74
81	Special certificate of title issued where grant or certificate of title lost ..	117	..	..	98	79	100	75	75
82	Holder of instrument wrongfully retained may be required by Registrar to deliver up same. On his refusal Court may issue summons, and, if necessary, warrant ..	cf. 130	..	..	cf. 126	cf. 60, 61	cf. 136	cf. 69, 70	cf. 76
83	Such holder may be committed to prison ..	..	..	..	..	..	..	..	..
84	Court may order delivery of instrument and, if necessary, Registrar may issue fresh certificate Where grant or certificate of title lost, &c., copy may be substituted, prepared from draft of the original kept in the registry ..	cf. 132	..	..	cf. 127	cf. 62, 63	cf. 137	cf. 71, 72	77
85	Registrar may call in duplicate or triplicate on sale by sheriff or mortgagee, or when required for cancellation, rectification, and inspection ..	..	..	..	..	..	..	..	78
86	Person refusing to deliver up duplicate or triplicate may be compelled to appear before Court or a judge ..	..	..	..	..	..	..	..	79
87	Lists of certificates of title called in for cancellation or rectification to be exhibited and advertised ..	..	..	..	..	..	..	..	80
88	Words of limitation unnecessary	3	..	..	3	76	3	214	81
89	PART IV.—DEALINGS WITH LAND: DIVISION I.—TRANSFERS.								
89	Mode of transfer of land, lease, mortgage, charge, &c. ..	cf. 48	..	..	cf. 42	cf. 96	cf. 42	cf. 76	82
90	Transfer includes transfer of right to sue ..	66	..	..	48	151	64	83	83
91	Registered proprietor may vest estate in his wife (or, if married woman, in her husband), or in himself jointly with others, or limit estates in remainder without uses, &c. ..	cf. 82	..	..	cf. 85	cf. 111	cf. 86	cf. 80	84

COMPARATIVE TABLES OF STATUTES.—TABLE VI.

Vic- toria.	SUBJECT MATTER OF SECTION.	Queens- land.	New South Wales.	South Australia.	Tasmania.	New Zealand.	Western Australia.
Act of 1890. 92	Instrument has same effect as if under seal, but if signed by married woman, must be acknowledged, unless she hold for separate use without restraint or anticipation In case of transfer, grant or certificate of title delivered up and cancelled as to all the land or the part transferred New certificate of title issued to purchaser, and also to vendor (for unsold portion) if required Proviso as to transfer of leasehold lands	cf. 112 cf. 49, 50, and Act of 1877, s. 17	cf. 96 cf. 44, 45, and Act of 1873, s. 1	cf. 255, 257 cf. 98, and 100	.. cf. 44, and Act of 1886, s. 12	C. 165 cf. 78	85 86
93							
94	Transfer by endorsement on grant or certificate of title where all the land transferred	Act of 1877, s. 17	Act of 1873, s. 1	99	Act of 1886, s. 12	77	87
95	Transferee of land subject to mortgage or charge to indemnify transferor	cf. 68	cf. 46	cf. 97	cf. 46	cf. 81	88
96	Short form for creation of easement; easement to be notified on certificate of title of servient tenement	C. 51, and Act of 1877, ss. 23, 28	cf. 43	cf. 81	cf. 43	cf. 61	..
97	Transfer by trustees of Friendly Society entitled to lands to be equivalent to transfer by registered proprietor	..	..	..	..	..	89
98	Copy writ of <i>fi. fa.</i> must be registered before, and less than three months before, transfer from sheriff produced for registration. (<i>See s. 139 post</i>)	cf. 91	cf. 92	cf. 110	cf. 94	..	90
99							
100	Mode of leasing land for terms exceeding three years Covenants by lessee to be implied in every lease	cf. 52 cf. 70, Act of 1877, s. 31	cf. 49 cf. 51	cf. 116 cf. 124	cf. 47 cf. 49	cf. 86 cf. 90	91 92
101							
102	Powers of lessor to be implied in every lease Short forms of covenants by lessees	71 cf. 73	52 cf. 65	125 cf. 265 152	50 cf. 65	91 cf. 157 84	93 94 95
103	Implied covenants by transferee on transfer of lease	..	..	..	..	..	96
104	Registrar to note particulars of re-entry by legal proceeding; upon entry made, lease determines	cf. 72	cf. 53	cf. 126	cf. 51	cf. 92	97
105	Mortgagee of interest of insolvent lessee whose trustee disclaims may apply to be registered as transferee, and in default lessor may apply for entry of surrender	..	76	173 (2), (3), (4)	77	119, 120	98
106	Lease may be surrendered by endorsement by lessee with concurrence of lessor	54	50	120-123	48	89	99
107	Lessee under the Act may sublet. But if lease mortgaged, mortgagee must consent	..	..	..	..	..	99

108	Mode of registering sub-lease .. .. .	..	..	..	..	..	..	100
109	Sub-leases to be kept in separate .. .. .	..	..	..	..	..	..	101
110	Provisions of Act as to leases apply with necessary modifications to sub-leases .. .. .	..	..	..	..	..	..	102
111	Additional covenants to be implied in sub-lease on part of the lessor .. .. .	..	..	..	..	..	..	103
112	Determination of lease or sub-lease by re-entry to be noted in Register Book .. .. .	..	..	..	..	..	..	104
113	Division III.—MORTGAGES AND ANNUITIES.	..	..	..	..	..	..	105
114	Mode of mortgaging or charging lands .. .. .	..	..	..	..	..	93	106
115	Mortgage and charge is a security only, and not a transfer .. .. .	..	..	..	..	..	94, 98	107
116	Procedure in case of default .. .. .	..	..	..	..	..	..	108
117	Unsatisfied demand of debt pursuant to terms of mortgage to create default upon which power of sale may be exercised .. .. .	..	..	..	..	..	..	109
118	Power of sale .. .. .	..	..	..	..	..	..	110
119	Application of purchase money .. .. .	..	..	..	..	..	..	111
120	Registration of transfer executed by mortgagee or annuitant vests land in purchaser .. .. .	..	..	..	..	..	..	112
121	In case of default mortgagee or annuitant may .. .. .	..	..	..	..	..	..	113
122	(a) Receive rents and profits, or distrain on tenant, or bring an action for recovery of land ; or .. .. .	..	..	..	..	..	..	114
123	(b) May apply for foreclosure order .. .. .	..	..	..	..	..	..	115
124	Power to distrain on tenant .. .. .	..	..	..	..	..	..	116
125	Covenants by mortgagee to be implied in every mortgage .. .. .	..	..	..	..	..	..	117
126	Mortgagee or annuitant of leasehold entering into possession liable to lessor .. .. .	..	..	..	..	..	..	118
127	Short form of covenant to insure by mortgagee .. .. .	..	..	..	..	..	..	119
128	Certain qualities of legal estate annexed to first mortgage under the Act, including right to bring certain actions .. .. .	..	..	..	..	..	..	120
129	Mortgagor not to bring such actions without written consent of mortgagee .. .. .	..	..	..	..	..	..	121
130	Application of moneys obtained from actions of waste by the mortgagor .. .. .	..	..	..	..	..	..	122
131	Application of moneys obtained from other actions by the mortgagor .. .. .	..	..	..	..	..	..	123
132	Application of moneys obtained in proceedings by a mortgagee .. .. .	..	..	..	..	..	..	124
133	Mortgagee may apply to Commissioner for an order for foreclosure .. .. .	..	..	..	..	..	..	125
134	Order issued by Registrar after advertisement offering land for sale vests land in mortgagee .. .. .	..	..	..	..	..	..	126
135	Mode of discharging mortgages and charges by payment .. .. .	..	..	..	..	..	..	127
136	Discharge of annuity, &c., by death or other event .. .. .	..	..	..	..	..	..	128
137	Mortgage money may be paid to Treasurer if mortgagee absent from colony, and mortgagee may be discharged .. .. .	..	..	..	..	..	..	129
138	First mortgagee to produce grant or certificate of title for registration of subsequent instrument .. .. .	..	..	..	..	..	..	130
139	Title to land brought under the Act subject to any mortgage to be held good in favor of mortgagee or purchaser from him applying to bring the land under the Act after foreclosure or sale .. .. .	..	..	..	..	..	..	131
140	Division IV.—MISCELLANEOUS.	..	..	..	..	..	..	132
141	Seal of corporation substituted for signature .. .. .	..	..	..	..	..	..	133
142	Seal of attorney of a corporation outside colony to be deemed seal of corporation .. .. .	..	..	..	..	..	..	134

COMPARATIVE TABLES OF STATUTES.—TABLE VI.

Vic- toria.	SUBJECT MATTER OF SECTION.	Queens- land.	New South Wales.	South Australia.	Tasmania.	New Zealand.	Western Australia.
<i>Act of</i> 1890. 137	Implied covenants may be negatived or modified Implied covenants may be pleaded as if expressly made Implied covenants to have same effect as if expressly made Implied covenants to be deemed several and not joint Succession to leaseholds under the Act Succession to personal interests in freehold lands Writ of execution does not bind land until registered, and ceases to bind land unless transfer lodged within three months. (<i>See s. 98 ante</i>)	74-76	89	262, 263, and C. 264	90	C. 158	cf. 131
138	..	cf. 88	cf. 78	cf. 175, <i>et seq.</i>	cf. 79	cf. 115, <i>et seq.</i>	132
139	..	91	92, and Act of 1878, s. 13	cf. 105, 110	C. 94	..	cf. 133
140	Except in case of fraud, no person dealing with registered proprietor to be affected by notice	cf. 109	111	cf. 71, 72, 186, 187	114	189	134
141	A transferee from a tenant in tail shall be registered for the larger estate which the tenant in tail is empowered to confer	..	..	..	Act of 1886, s. 8	..	135
142	Powers of lessees under Land Act not extended	..	..	..	..	..	..
143	Registrar to furnish to any applicant, on payment of fee, plan showing part of land dealt with where memorandum endorsed on certificate of title does not describe such part	..	..	..	..	..	136
144	PART V.—CAVEATS. Caveat forbidding registration of any dealing with land under the Act may be lodged Caveat may be withdrawn; form of caveat	cf. 98, 100, 102	81	191 (1), (8)	82	138, 139, 148	137
145	Notice of caveat to be given by Registrar, and caveator may be summoned to show cause Except in certain cases, caveat lapses after fourteen days Notice to caveator of intended dealing But judge may extend time Second caveat cannot be lodged on same grounds Effect of caveat Compensation payable by order in Chambers for lodging caveat without reasonable cause	cf. 99, Act of 1877, ss. 39, 40	cf. 82	cf. 191, (2), (4), (6), (7), (11)	cf. 83	cf. 143, 144, 146, 149	138
146	..	101	83	191 (3)	84	142	139
147	..	cf. 103	cf. 84	cf. 191, (10)	cf. 85	cf. 148	140
148	Memorandum of caveats under s. 144 to be endorsed on register, and copy of caveat or of material part thereof sent with notification required by s. 145	..	..	..	..	..	141
149	Caveat on behalf of beneficiary under will or settlement need not be removed to admit regis- tration of a dealing authorised by the will or settlement	..	..	..	..	..	142
150	PART VI.—POWERS OF ATTORNEY AND ATTESTATION OF INSTRUMENTS. Power of attorney may be given by registered proprietor Must be registered and may be revoked as provided by <i>The Instruments Act, 1890</i>	cf. 104, 108	cf. 69, 74	cf. 155, 156, 157	cf. 70, 75	cf. 152, 153, 154	143

151	Existing and future powers of attorney available, also those given by owner before being registered as proprietor	..	..	..	..	..	144
152	Attestation and proof of execution of instruments	..	..	..	..	..	145 cf. 145
153	PART VII.—REGISTRATION ABSTRACTS, SEARCH CERTIFICATES, AND STAY ORDERS. Registered proprietor of land may obtain registration abstract to deal with land when beyond colony						
154	Entries thereon take priority to entries in register, except entries relating to sale under <i>fi. fa.</i> or order of Court, or to insolvency of proprietor	..	..	..	..	..	..
155	Mode of procedure under registration abstract	..	..	..	..	..	..
156	Proceedings upon delivery of registration abstract to Registrar	..	..	..	..	..	..
157	Procedure when registration abstract is lost, &c.	..	..	..	..	..	..
158	Person desiring information as to whether a proprietor is able to deal with land comprised in his certificate of title free from obligation	..	..	..	..	..	..
159	Person applying for search certificate entitled to inspect register, and deemed to be acquainted with entries therein	..	..	..	..	..	..
160	Such person may, if he proposes to deal for value with proprietor, also apply for stay of registration of new dealings for forty-eight hours, and, if title free, shall obtain stay on payment of fee	..	..	..	..	..	..
161	If instrument executed by proprietor in favor of applicant be lodged within time limited, it is entitled to priority over caveat, writ, insolvency, &c.	..	..	..	..	..	..
162	Other instruments lodged within such limited time take priority, <i>inter se</i> , according to lodgment	..	..	..	..	..	..
163	PART VIII.—SURVEYS, PLANS, PARCELS AND BOUNDARIES.	..	..	..	..	..	..
164	Upon application to bring land under Act or to subdivide under s. 172, <i>post</i> , or to amend certificate of title under this Act, Commissioner may require special survey of the land	..	..	..	..	..	..
165	Commissioner may require accuracy of survey to be verified	..	..	..	..	..	..
166	Commissioner may disregard errors of dimensions which do not exceed those allowed in <i>Real Property Act, 1890</i>.	..	..	..	..	..	..
167	Excess of land in a subdivided block may be apportioned between different owners or occupiers	..	..	..	..	..	..
168	Commissioner may determine doubtful boundaries of old subdivisions by causing survey to be made and preparing new scheme of subdivision	..	..	..	..	..	..
169	Notice of such plan to be advertised and given to owners or registered proprietors, and Commissioner may make alterations suggested by them	..	..	..	..	..	..
170	The subdivisional plan to be signed by the chief draftsman and Commissioner, and become a lodged map of subdivision	..	..	..	..	..	..
	Any person injured by issue of certificate of title in pursuance of plan shall have action for damages under s. 213, <i>post</i>	..	..	..	..	..	..
	Notice of subdivision and plan to be published in <i>Government Gazette</i>	..	..	..	..	..	..

COMPARATIVE TABLES OF STATUTES.—TABLE VI.

Vic- toria.	SUBJECT MATTER OF SECTION.	Queens- land.	New South Wales.	South Australia.	Tasmania.	New Zealand.	Western Australia.
<i>Act of 1890.</i>							
171	Expense of survey; how paid .. .. .	..	..	..	..	..	165
172	Proprietor subdividing land to deposit map if required	..	..	..	..	..	cf. 15,
173	Surveyor-General to license surveyors .. .. .	..	..	..	..	..	166
174	After subdivision of land, as above, number of allotment on plan is sufficient description for purposes of dealing	..	..	..	..	..	167
175	Abutals may be used in description of land in certificate of title	..	..	..	..	..	168
176	Objects which may constitute abutals .. .. .	..	..	..	..	..	169
177	PART IX.—RECTIFICATION OF CERTIFICATES.						
178	Proprietor may apply for amendment of certificate of title to make boundaries coincide with land <i>bonâ fide</i> occupied under certificate of title	..	..	..	..	..	170
179	Proprietor may apply to have certificate of title of neighbouring proprietor amended ..	..	..	..	..	..	171
180	Form of application .. .. .	..	..	..	..	..	172
181	Application to be advertised .. .. .	..	..	..	..	..	173
182	Special notices to be given to other proprietors where application affects land in their certificate	..	..	..	..	..	174
183	Notice of application to be published and posted in office .. .. .	..	..	..	..	..	175
184	Person objecting to application may lodge caveat .. .. .	..	..	..	..	..	176
185	Application may be granted though other certificates affected thereby .. .. .	..	..	..	..	..	177
186	On grant of application, other certificates may be rectified and substituted certificates issued ..	..	..	..	..	..	178
187	Proprietor of land of which certificate of title is rectified to get notice of rectification ..	..	..	..	..	..	179
188	PART X.—SPECIAL POWERS AND DUTIES OF COMMISSIONER AND REGISTRAR.						
189	Commissioner may, by summons, require explanation and production of documents from pro- prietor or other person interested in intended dealing	11 (1), (2) cf. 9	11 (1), (2) cf. 90	220 (1)	11 (1), (2) cf. 92	175 (1)	180
190	Commissioner may make regulations and make alterations in forms .. .. .	..	..	cf. 220 (7)	..	cf. 218	181
191	Registrar to carry out order of Supreme Court or Commissioner vesting trust estate ...	83, Act of 1877, s. 46	109	184	112	85	182
192	Power to Commissioner to make vesting order on proof of purchase completed by possession ..	..	..	..	..	..	183
193	Encumbrances based on rights of trustee in insolvency or execution creditor may be removed from register on proof of satisfaction, &c.	..	..	..	..	..	184
194	Satisfaction of judgment may be entered before copy writ of <i>fi. fa.</i> ceases to operate ..	91	92	109	..	..	185
195	Commissioner or Registrar may cancel stamps on transfers, &c. .. .. .	..	..	..	..	..	cf. 186

	Entry to be made in Register Book of appointment of executor or administrator	See Intestacy Act of 1877, 41 Vic., No. 24	See 26 Vic., No. 20	See Intestate Estates Act of 1867, 31 Vic., No. 29	See Deceased Persons Estates Act, 1874	See Administration Act, 1879	187
193	Special powers and duties of Registrar ..	..	..	..	..	..	188
194	(1) To administer oaths ..	..	..	..	..	..	189
195	(2) To correct errors by direction of Commissioner ..	..	..	..	..	..	190
196	(3) To enter caveats upon direction of Commissioner ..	..	..	..	..	..	191
197	Registrar may correct patent errors in instruments without direction of the Commissioner ..	..	..	..	..	..	192
198	Registrar to pay moneys to receiver of revenue and to render accounts ..	..	..	..	..	..	193
199	Fees to be charged ..	..	..	..	..	..	194
200	Defective instrument lodged for registration, if not amended within fixed time limited by notice, may be rejected and half the fees forfeited	..	..	..	..	..	195
201	Commissioner may state special case for the opinion of the Full Court	..	..	..	..	..	196
202	Assurance Fund to be invested in Government securities ..	..	..	..	..	..	197
203	Registrar has remedy over to recoup Assurance Fund ..	..	..	..	..	..	198
204	Assurance Fund not liable for breach of trust nor in certain other cases ..	..	..	..	..	..	199
205	Special contribution payable to Assurance Fund on grant of certain applications as indemnity for imperfect title. (And see s. 47, ante)	..	..	..	..	..	200
206	PART XII.—ACTIONS AND OTHER REMEDIES.	..	..	..	..	..	201
207	Personal immunity of officers under the Act ..	..	..	..	..	..	202
208	No action of ejectment against registered proprietor, except in certain cases ..	..	..	..	..	..	203
209	Upon recovery of land, &c., Court may order cancellation of instrument or entry, and substitution of new one ..	..	..	..	..	..	204
210	Person deprived of land may bring action against person blamable ..	..	..	..	..	..	205
211	Except in cases of fraud or error, such person ceases to be liable upon <i>bonâ fide</i> transfer for value ..	..	..	..	..	..	206
212	Where remedy ineffective, damages recoverable from Registrar out of Assurance Fund ..	..	..	..	..	..	207
213	Value of buildings erected after deprivation to be excluded from calculation of damages ..	..	..	..	..	..	208
214	No action of ejectment nor for recovery of damages, against <i>bonâ fide</i> purchaser for value ..	..	..	..	..	..	209
215	Applicant or proprietor may summon Registrar to show cause if dissatisfied ..	..	..	..	..	..	210
216	Expenses to be borne by applicant ..	..	..	..	..	..	211

COMPARATIVE TABLES OF STATUTES.—TABLE VI.

Vic- toria.	SUBJECT MATTER OF SECTION.	Queens- land.	New South Wales.	South Australia.	Tasmania.	New Zealand.	Western Australia.
<i>Act of 1890.</i>							
210	Costs of summons and proceedings under above section .. .. .	..	..	..	..	194	204
211	Action against Registrar for mistake, &c., or by person deprived of land and barred of action for recovery	cf. 128	119	cf. 208	128	178, 179	205
212	Value of buildings erected after deprivation to be excluded .. .. .	..	..	..	..	- ..	206
213	Persons sustaining loss when land brought under Act, or certificate rectified owing to inaccuracy of Crown survey, may recover damages against Assurance Fund, <i>non-obstante</i> ss. 207-211 .. .. .	..	..	..	..	..	207
214	Additional cases in which action lies against Assurance Fund .. .. .	..	..	210	Act of 1893, s. 7	180	208
	Person entitled to bring action against Assurance Fund may apply in writing for compensation to Commissioner, and be paid by him .. .. .	..	..	..	..	..	..
215	One month's notice of action to be served on Registrar	cf. 128, 129	120	cf. 208	128, 129	180, 181	209
216	Mode of payment out of Assurance Fund	127, 128	121	cf. 206	cf. 128	cf. 179	210
217	Limitation of actions	cf. 126, 127, 21	cf. 122	C. 215, 216	cf. 130	cf. 187, 188	211
218	Plaintiff in action for recovery, or for damages for deprivation of land, nonsuited if deprivation caused by bringing land under Act, and he wilfully, &c., omitted to lodge caveat .. .. .	..	134	224	143	198, 199	212
219	Actions and appeals governed by rules of Supreme Court .. .. .	..	..	..	..	..	213
	Power to make new rules .. .. .	..	..	..	..	..	..
	Obligation to make discovery not affected by Act .. .. .	..	..	..	..	..	..
	PART XIII.—OFFENCES.						
220	Certain acts to be misdemeanours	cf. 10	cf. 130	cf. 233	cf. 139	cf. 200	214
221	Punishment thereof	cf. 142	cf. 132	cf. 229	cf. 140	cf. 201	215
222	Forgery, &c., to be felony	cf. 142	cf. 133	cf. 231	cf. 141	cf. 203	216
223	Punishment of felony	cf. 142	131	240	142	204	217
224	Conviction not to affect civil remedy	cf. 143	135	C. 235, et seq.	cf. 144	216	cf. 218
	Jurisdiction of Courts; offences prescribed and penalties recoverable in name of Attorney-General .. .. .	..	..	..	..	..	..
	PART XIV.—MISCELLANEOUS.						
225	Devisee or person having power of appointment may apply to be registered as proprietor by transmission	cf. 89	cf. 79	cf. 175, et seq.	cf. 80	cf. 115, et seq.	219
226	Application to be advertised, and if no caveat lodged applicant registered as proprietor	cf. 89	80	cf. 175, et seq.	81	cf. 117	220
227	Remainderman or reversioner may be registered as such	cf. 36	cf. 88	cf. 75	cf. 89, and Act of 1896, s. 16	cf. 80	221

228	Upon entry of particulars of marriage of female proprietor, husband may be registered as joint proprietor where land not held to separate use	87	77	189, 190	78	121, C. 165	226
229	Registration of survivor of joint proprietors	..	cf. 87	cf. 188	cf. 88	..	227
230	Proprietors and transferees of land or interest for the time being to stand in place of previous owners	..	..	..	..	..	228
231	Action may be brought or defended by beneficiary in name of trustee, if indemnity given	84	110	185	113	128	229
232	Abandonment of right-of-way may be presumed after thirty years' adverse possession	..	..	..	..	..	cf. 230
233	Where building has encroached on road or street in certain towns for fifteen years, title may be given	..	..	..	..	..	cf. 231
234	Registrar to give receipts for documents lodged	..	..	..	..	..	232
235	<i>Lis pendens</i> declared not to affect dealings with land under the Act	..	..	250	..	..	233
236	Assignee of insolvent entitled to be registered as to land of which insolvent is proprietor at or after order of sequestration	cf. 86	cf. 75	cf. 170, 171, 180	cf. 76	cf. 115-117	cf. 234
237	Until assignee registered, insolvency of proprietor not to affect dealings by him	..	..	..	..	..	235
238	Tenant in tail under Act entitled to deal with land as effectually as tenant in tail under general law, but no acknowledgment necessary	..	..	..	Act of 1886, s. 7	..	236
239	Conditions of Sale in Twenty-fifth Schedule to apply in absence of other conditions	..	..	..	..	..	237
240	Effect of alteration of Forms in Schedule	3	3	275	3	215, et seq.	238
241	Searching the Register Certified copy obtainable and <i>prima facie</i> evidence of contents of instrument	121, 122	102, 103	cf. 65	105, 106	cf. 39, 40	239

COMPARATIVE TABLES OF STATUTES.—TABLE VII.

Western Australia.	SUBJECT MATTER OF SECTION.					Queens- land.	New South Wales.	Victoria.	South Australia.	Tasmania.	New Zealand.
1	Short Title ..	..	..	..	..	..	..	3	6	1	..
2	Repeal ..	..	..	..	..	1	1	..	..	..	..
3	Laws inconsistent not to apply to land under Act	..	..	..	..	3	3	4	3	3	2
4	Interpretation : (1) Definitions (2) Land under Repealed Acts deemed under this Act	..	..	..	..	..	..	5	..	..	..
5	PART I.—OFFICERS.										
6	Commissioner of Titles	..	..	..	..	..	..	6	..	..	5
7	Deputy Officers ..	..	..	..	..	5	..	7	..	..	..
8	Registrar of Titles ..	..	..	..	..	..	..	7	..	..	..
9	Examiners and other officers ..	..	..	..	..	..	..	9	..	..	..
10	Certain signatures to be officially noticed	..	..	..	..	8	7	10	21	8, 91	9
11	Registrar's Seal ..	..	..	..	..	..	..	11	..	..	..
12	Powers of Assistant Registrar ..	..	..	..	..	..	..	12	..	..	..
13	Commissioner and examiners not to practise	..	..	..	..	..	..	13	..	..	..
14	Oaths of office ..	..	..	..	..	6	10	14	..	See 28	210
15	Sworn valuers ..	..	..	..	..	Act of 1877, 6	3	14	See 201	..	..
16	Licensed surveyors ..	..	..	..	..	118	100	16, 17, 18, 172	243	See 103	170
17	Regulations for purposes of survey	..	..	..	..	..	..	17	..	..	..
18	License of surveyor revocable ..	..	..	..	..	..	..	19	C. 7, 26	C. Act of 1863, ss. 3, 7	C. 10
19	PART II.—BRINGING LAND UNDER THE ACT.										
20	Crown lands, when alienated in fee or for years, to be registered under the Act	..	..	..	..	C. 15	C. 12	20	..	..	..
	Grants in trust for public purposes to be endorsed, "No survivorship"	..	..	..	..	..	..	21	27	Act of 1863, s. 4	17
	What lands may be brought under Act ..	..	..	..	..	16	13	..	..	..	..
	What persons may apply to bring lands under Act	..	..	..	..	cf. 16	cf. 13, and Act of 1878, ss. 2, 3	cf. 21	cf. 27	cf. Act of 1863, s. 4	cf. 18

COMPARATIVE TABLES OF STATUTES.—TABLE VII.

Western Australia.	SUBJECT MATTER OF SECTION.	Queens- land.	New South Wales.	Victoria.	South Australia.	Tasmania.	New Zealand.
21	If no transactions registered under the General Law, certificate of title issued at once ..	cf. 18, 19	cf. 15, 16	22	cf. 32, 33	cf. 17, and Act of 1863, s. 5	cf. 22
22	Where transactions have been registered, but parties interested (if any) consent to application, or encumbrances (not being mortgages) are capable of notification under the Act, advertisement necessary	cf. 19, 20	cf. 16, 17	23	cf. 32 to 34	cf. 17, 18	cf. 21, 23
23	Notice of application, to whom and how given ..	cf. 21	cf. 18	24	cf. 35	cf. 19	cf. 24
24	Persons claiming title by possession to post notice of application on land ..	..	..	26	..	..	..
25	If no caveat received, land brought under Act ..	22	19	27	36, 37	20	25
26	Land occupied may be brought under the Act by a different description from that in the title on special application	..	..	28	..	..	..
27	Occupied land, how brought under Act where survey inaccurate ..	..	..	29	..	..	..
28	Occupied land, how brought under Act where dimensions differ from those described in Crown grant	..	..	30	..	..	..
29	Excess of land may be apportioned between different owners ..	..	..	31	..	..	..
30	Parties interested may lodge caveat ..	23	21	32	39	23	137
31	If caveat received, proceedings suspended ..	24	22	33	40	23	141
32	Caveat lapses in one month, unless proceedings taken ..	cf. 25	cf. 23	..	..	cf. 24	cf. 145
	Lapsed caveat cannot be renewed ..	cf. 25	..	34	45	..	cf. 149
33	Judges may require production of title-deeds in support of application ..	cf. 11(1), 17, 29	cf. 11(1), 14	35	cf. 220(1)	cf. 11(1), 15	cf. 175
34	Application may be withdrawn, and title-deeds returned ..	..	..	36	29	25	(1), 19
35	Caveator entitled to compensation ..	29	24	36	41	25	27
	Deeds to be endorsed when part of land included in them is brought under Act, and retained when all is brought under	cf. 30	cf. 25	37	cf. 42	cf. 26	cf. 28
36	No action to be brought on covenant to produce documents retained	..	..	37	..	..	..
37	Subsisting lease to be endorsed and returned ..	..	..	38	..	..	..
38	Additional evidence to be scheduled ..	..	..	..	..	..	..
39	How certificate of title issued, where applicant dies before issue ..	31	28	40	43	27	cf. 64
40	Leaseholds (of which ten years are unexpired) may be brought under Act ..	..	cf. 13	41	..	..	..
	Percentage in the pound to be levied for assurance of title ..	41	27	42	201	28	177
41	On bringing leaseholds under the Act fees to be paid on value of leasehold ..	..	..	43	..	..	..

42	Production of lease may be dispensed with in bringing land under Act	..	..	..	44	..	..	..	..	..
43	Certain memorials to be sufficient evidence of conveyances in fee ..	..	..	..	45	..	..	..	..	..
44	No fee payable to Assurance Fund for use of memorial where applicant in possession for twenty years	..	..	..	46	..	..	..	..	..
45	Additional indemnity to Assurance Fund for imperfect title. (And see s. 137 post)	..	..	..	47	..	..	Act of 1886, s. 20	..	..
46	Title to land sold under order or decree may be deemed sufficient	..	..	..	48	..	..	..	..	..
47	Formalities of future orders confirming purchases	..	..	..	..	..	..	..	..	..
48	PART III.—CERTIFICATES OF TITLE AND REGISTRATION. Registrar to keep Register Book and bind up therein one duplicate grant or certificate of title and deliver the other to person entitled	32	30, 31	..	50	47-49	31, 32	31-33	..	..
49	All dealings notified in order of priority...	33	31	..	50	..	32	50	..	..
50	Every certificate of title to be on parchment	..	..	..	51	..	..	..	..	..
51	One certificate of title may be issued for lands not contiguous in certain cases	..	..	..	52	..	..	..	..	..
52	Area of land less than one acre need not be stated in certificate of title	..	..	..	53	..	..	..	..	..
53	Where consideration of transfer is not money, true consideration must be stated	..	..	..	54	..	..	..	..	..
54	Receipts may be required for duplicate certificate of title to prevent personation	..	..	..	55	..	..	..	..	..
55	Grants, certificates, and other instruments when deemed to be registered	..	..	..	56	..	..	..	..	..
56	Instruments (except transfer whereon a new certificate of title is required) may be in duplicate	..	..	..	57	..	..	..	..	..
57	Instruments registered in order of production	..	..	..	58	..	..	..	..	..
58	Instruments take priority according to registration	..	..	..	59	..	..	..	..	..
59	One duplicate bound in Register Book, and the other delivered to person entitled	..	..	..	60	..	..	..	..	..
60	Leases and mortgages may be in triplicate	..	..	..	61	..	..	..	..	..
61	No notice of trusts to be entered in register	..	..	..	62	..	..	..	..	..
62	Document declaring trusts may be deposited	..	..	..	..	..	..	..	..	..
63	Memorandum defined	..	..	..	..	..	..	..	..	..
64	Memorandum to be entered on duplicate instrument and to be receivable as evidence...	..	..	..	..	..	..	..	..	..
65	Memorandum only effectual to pass estate or interest when registered.	..	..	..	..	..	..	..	..	..
66	When two conflicting instruments presented at same time, that which is accompanied by grant or certificate of title shall be registered	..	..	..	..	..	..	..	..	..
67	Proprietor entitled to certificate of title	..	..	..	..	..	..	..	..	..
68	If certificate of title issued to person under disability, particulars to be stated	..	..	..	..	..	..	..	..	..
69	Joint proprietors to hold as joint tenants	..	..	..	..	..	..	..	..	..
70	Tenants in common may receive one or several certificates	..	..	..	..	..	..	..	..	..
71	Words "no survivorship" may be endorsed on transfer or lease, or entered on instrument by Registrar by request of joint proprietors; effect of such words	..	..	..	..	..	..	..	..	..
72	Notice to be published before order obtained nullifying effect of such words	..	..	..	..	..	..	..	..	..
73	Commissioner may dispense with notice in case of Friendly Society	..	..	..	..	..	..	..	..	..

COMPARATIVE TABLES OF STATUTES.—TABLE VII.

Western Australia.	SUBJECT MATTER OF SECTION.	Queens- land.	New South Wales.	Victoria.	South Australia.	Tasmania.	New Zealand.
63	Certificate of title to be conclusive evidence of title	33	33	69	80	33	cf. 65, 66
64	Certificate of title conclusive evidence of title to easement..	..	..	70	..	Act of 1886, s. 26	..
65	Effect of words relating to easements in certificate of title ..	..	..	71	..	Act of 1886, s. 27	..
66	Extension of Fifth Schedule to easements	..	cf. 43	72	cf. 81	cf. 43	cf. 61
67	Certificate of title to be conclusive evidence in suit for specific performance or action for damages	cf. 51 cf. 96	cf. 112	73	..	cf. 115	..
68	Estate of registered proprietor paramount, subject to certain exceptions	cf. 44	cf. 40	cf. 74	cf. 69	cf. 40	cf. 55
69	Easements existing under deed or writing to be notified as encumbrances; also building condition, condition against alienation, &c.	..	..	cf. 75	..	..	..
70	Registered proprietor deemed seized of reversion expectant on lease	cf. 47	cf. 29	76	cf. 46	cf. 30	cf. 29
71	Upon surrender of existing certificates of title a single certificate may be obtained for all land included therein	cf. 94	cf. 97	77	cf. 78	cf. 99	cf. 74
72	References showing history of land to be kept in Register Book	..	..	78	..	..	..
73	Dealings may be registered prior to issue of Crown grant ..	..	cf. 99	cf. 79	cf. 112	cf. Act of 1886, 11	..
74	Registrar may dispense with production of duplicate certificate of title or other instrument in certain cases	cf. 95	91	80	220 (9)	93	cf. 38
75	Special certificate of title issued where certificate of title lost, &c. ..	117	98	81	79	100	75
76	Holder of instrument wrongfully retained may be required by Commissioner to deliver up same. On his refusal, Court may issue summons or warrant	cf. 130	cf. 126	cf. 82	cf. 60, 61	cf. 136	cf. 69, 70
77	Such holder may be committed to prison. Court may order delivery of instrument, and, if necessary, Registrar may issue fresh certificate of title	cf. 132	cf. 127	83	cf. 62, 63	cf. 137	cf. 71, 72
78	Registrar may call in duplicate or triplicate on sale by Sheriff or mortgagee, or when required for cancellation, rectification or inspection	..	..	85	..	..	..
79	Person refusing to deliver up duplicate or triplicate may be compelled to appear before Court or judge	..	..	86	..	..	..
80	Lists of certificates of title called in for cancellation or rectification to be exhibited and advertised	..	..	87	..	..	..
81	Words of limitation unnecessary	3	3	88	76	3	214
82	PART IV.—DEALINGS WITH LAND: DIV. I., TRANSFERS. Mode of transfer of land, lease, mortgage, charge, &c. ..	cf. 48 66	cf. 42 48	89 90	cf. 96 151	cf. 42 64	cf. 76, 82 83
83	Transfer includes transfer of right to sue	cf. 82	cf. 85	91	cf. 111	cf. 86	cf. 80

84	Registered proprietor may vest estate in his wife (or, if married woman, in her husband), or in himself jointly with others, or limit estates in remainder without uses, &c.	cf. 112	cf. 96	92	cf. 255, 257	..	C. 165
85	Instrument has same effect as if under seal, but if signed by married woman must be acknowledged, unless she hold for separate use without restraint on anticipation	cf. 49, 50, and Act of 1877, 17	cf. 44, 45, and Act of 1873, 1	93	cf. 98, 100	cf. 44, and Act of 1886, 12	79, cf. 78
86	In case of transfer, certificate of title delivered up and cancelled as to all the land or the part transferred. New certificate of title issued to purchaser and also to vendor (for unsold portion) if required. Proviso as to transfer of leasehold lands	cf. 68	cf. 46	94	cf. 97	cf. 46	77
87	Transfer by endorsement on certificate of title where all the land transferred	..	..	95	..	..	cf. 81
88	Transferee of land subject to mortgage or charge to indemnify transferor	..	..	96	..	..	..
89	Transfers by trustees of Friendly Societies to be as efficacious as if made by registered proprietors	..	..	97	..	..	..
90	Copy writ of <i>fi. fa.</i> must be registered before, and less than three months before, transfer from sheriff produced for registration. (<i>Vide</i> s. 113, <i>post</i>)	..	..	98	..	..	..
DIV. II.—LEASES AND SUB-LEASES.							
91	Mode of leasing lands for term exceeding three years	cf. 52	cf. 49	99	cf. 116	cf. 47	cf. 86
92	Covenants by lessee to be implied in every lease	cf. 70, and Act of 1877, 31	cf. 51	100	cf. 124	cf. 49	cf. 90
93	Powers of lessor to be implied in every lease	71	52	101	125	50	91
94	Short forms of covenants by lessees	cf. 73	cf. 65	102	cf. 265	cf. 65	cf. 157
95	Implied covenants by transferee on transfer of lease	..	..	103	152	..	84
96	Registrar to note particulars of re-entry by legal proceeding. Upon entry made, lease determines	cf. 72	cf. 53	104	cf. 126	cf. 51	cf. 92
97	Mortgagee of interest of insolvent lessee, whose trustee disclaims, may apply to be registered as transferee, and, in default, lessor may apply for entry of surrender	..	76	105	173 (2), (3), (4)	77	119, 120
98	Lease may be surrendered by endorsement by lessee with concurrence of lessor	54	50	106	120-123	48	89
99	Lessee may sub-let; but, if lease mortgaged, mortgagee must consent	..	..	107	..	..	..
100	Mode of registering sub-lease	..	..	108	..	..	..
101	Sub-leases to be kept in separate Sub-lease Register	..	..	109	..	..	..
102	Provisions of Act as to leases apply, with necessary modifications, to sub-leases	..	..	110	..	Act of 1893, s. 12	..
103	Additional covenants to be implied in sub-lease on the part of lessor	..	..	111	..	..	..
104	Determination of lease or sub-lease by re-entry to be noted in Register Book	..	..	112	..	..	..
105	Mode of mortgaging or charging lands	56	54	113	128, 129	52	93
DIV. III.—MORTGAGES AND ANNUITIES.							

COMPARATIVE TABLES OF STATUTES.—TABLE VII

	Western Australia.	SUBJECT MATTER OF SECTION.	Queens- land.	New South Wales.	Victoria.	South Australia.	Tasmania.	New Zealand.
<i>Act of</i> 1893.								
106		Mortgage or charge is security only and not transfer	60	{ 55	{ 114	{ 132	{ 53	94
107		Procedure in case of default	57	..	115	..	..	98
		Unsatisfied demand of debt pursuant to terms of mortgage to create default upon which power of sale may be exercised	..	..	..	..	..	..
108		Power of sale	57	56	116	133	54	99
109		Application of purchase money	57	56	117	135	54	101
110		Registration of transfer executed by mortgagee or annuitant vests land in purchaser ..	58	57	118	136	55	102
111		In case of default, mortgagee or annuitant may	..	..	..	..	..	..
		(a) Receive rents and profits, or distrain on tenant, or bring an action for recovery of land, or	60	58	119	cf. 137	56	96
		(b) Apply for foreclosure order .. .. .	..	..	..	..	..	..
112		Power to distrain on tenant	cf. 60	58	119	See 140	56	..
113		Covenants by mortgagor to be implied in every mortgage	61	59	120	138	57	97
114		Mortgagee or annuitant of leasehold entering into possession liable to lessor	cf. 69	cf. 64	121	130	62	95
115		Short form of covenant to insure by mortgagor	62	60	122	139	58	113
116		Certain qualities of legal estate annexed to first mortgage, including right to bring certain actions	..	..	123	..	..	..
117		Mortgagor not to bring such actions without written consent of mortgagee .. .. .	..	..	124	..	..	..
118		Application of moneys obtained from actions by the mortgagor for waste of or damage to the mortgaged lands	..	..	125	..	..	..
		Application of moneys obtained from other actions by the mortgagor	..	..	126	..	..	..
119		Application of moneys obtained in proceedings by a mortgagee	..	..	127	..	..	..
120		Mortgagee may apply to Commissioner for an order for foreclosure .. .. .	..	..	128	..	..	..
121		Order issued by Registrar after advertisement offering land for sale vests land in mortgagee ..	..	113	129	140	121	..
122		Mode of discharging mortgages and charges by payment .. .. .	..	114	130	141, 142	122	..
123		Discharge of mortgage executed before land brought under Act and remedies of mortgagee to be similar	63	61	131	143, 144	59	108
124		Discharge of annuity, &c., by death or other event	..	..	..	..	..	..
125		Mortgage money may be paid to Treasurer if mortgagee absent from Western Australia, and mortgage may be discharged	63	62	132	145	60	110
126		First mortgagee to produce certificate of title for registration of subsequent instrument	64	63	133	146, 147	61	109
127		Title to land brought under the Act subject to any mortgage to be held good in favour of mortgagee or purchaser from him applying for a certificate of title	..	..	134	..	..	..
128		Form of mortgage to trustees of Building Society .. .. .	..	..	135	..	..	..
129		DIVISION IV.—MISCELLANEOUS.	..	..	..	..	..	..
130		Seal of corporation substituted for signature	114	93	136	270	95	166
		Seal of attorney of corporation outside colony to be deemed seal of corporation	..	..	..	..	..	..

131	Implied covenants and powers may be negatived or modified	..	..	76	89	137	262	90	159
	Implied covenants may be pleaded as if expressly made ..	..	..	74	89	137	263	90	159
	Implied covenants to have same effect as if expressly made ..	..	..	75	89	137	263	90	158
	Implied covenants to be deemed joint and several ..	..	..	C. 74	C. 89	C. 137	264	C. 90	158
132	Succession to leasehold lands under the Act ..	..	..	..	..	138	..	..	..
	Succession to personal interests in freehold lands ..	..	..	88	78	138	cf. 175, et seq.	79	cf. 115, et seq.
133	Writ of execution does not bind land until registered. Satisfaction of writ ..	..	..	cf. 91	cf. 92, and Act of 1878, 13	cf. 139	cf. 105- 110	C. 94	..
134	Unregistered instrument or equitable mortgage, &c., not to prevail unless caveat lodged before writ	..	..	..	..	140	71, 72 and 186, 187	114	189
135	Except in case of fraud, no person dealing with registered proprietor to be affected by notice ..	..	..	cf. 109	111	141	..	..	..
136	Transferee from tenant-in-tail shall be registered for the larger estate which a tenant-in-tail is empowered to confer	..	..	..	..	143	..	..	..
	Registrar to furnish to any applicant, on payment of fee, plan showing part of land dealt with where memorandum endorsed on certificate of title does not describe such part	..	..	..	..	..	..	..	..
	PART V.—CAVEATS.	..	..	..	..	..	..	..	..
137	Caveat forbidding registration of any dealing with land under the Act may be lodged ..	..	..	cf. 98, 100	81	144	191 (1)	82	138, 139
	Caveat may be withdrawn ..	..	..	102	..	145	191 (8)	..	148
138	Notice of caveat to be given by Registrar, and caveator may be summoned to show cause ..	..	..	99	82	145	191 (2)(4)	83	143, 144
	Except in certain cases, caveat lapses after fourteen days' notice to caveator of intended dealing	..	..	Act of 1877, s. 39	82	145	cf. 191 (6)	83	146
	But judge may extend time ..	..	..	..	..	145	cf. 191 (7)	..	..
	Second caveat cannot be lodged on same grounds ..	..	..	Act of 1877, s. 40	..	145	191 (11)	..	cf. 149
139	Effect of caveat ..	..	..	101	83	146	191 (3)	84	142
140	Compensation payable by order in Chambers for lodging caveat without reasonable cause ..	..	..	cf. 103	cf. 84	147	cf. 191 (10)	cf. 85	cf. 147
141	Memorandums of caveats under s. 137, to be endorsed on register, and copy of caveat or of material part thereof sent with notification required by s. 138	..	..	..	..	148	..	..	..
142	Caveat on behalf of beneficiary under will or settlement need not be removed to admit registration of a dealing authorised by the will or settlement	..	..	..	..	149	..	..	..
	PART VI.—POWERS OF ATTORNEY AND ATTESTATION OF INSTRUMENTS.	..	..	..	..	..	..	..	..
143	Proprietor of land, lease, mortgage, &c., may give power of attorney to be registered ..	..	..	cf. 104, 108	cf. 69, 74	cf. 150	cf. 155, 156, 157	cf. 70, 75	cf. 152, 153, 154
144	Existing powers of attorney available, also those given by owner before being registered as proprietor	..	..	..	..	151	..	..	150
145	Attestation and proof of execution of instruments and powers of attorney	cf. 115, 116, Act of 1877, s. 5	cf. 94, 95	cf. 152	cf. 267, 268	cf. Act of 1886, s. 29	cf. 160, 161, 162

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COMPARATIVE TABLES OF STATUTES.—TABLE VII.

Western Australia.	SUBJECT MATTER OF SECTION.	Queens- land.	New South Wales.	Victoria.	South Australia.	Tasmania.	New Zealand.
<i>Act of 1893.</i> 191	Fees to be charged	140	105, and Act of 1873, s. 4	197	22	108	211
192	Defective instrument, &c., lodged for registration, if not amended within fixed time limited by notice, may be rejected and half the fees forfeited	..	..	198	..	..	..
193	Commissioner may state special case for Supreme Court PART XI.—ASSURANCE FUND.	14	cf. 108	199	cf. 223	cf. 111	cf. 197
194	Assurance Fund to be invested in Government securities	42	28	200	cf. 202	29	cf. 177
195	Registrar has remedy over to recoup Assurance Fund	cf. 127	123	201	217,	132	183,
196	Assurance Fund not liable for breach of trust	42	124	202	<i>et seq.</i>	133	<i>et seq.</i>
	Nor in certain other cases	cf. 127	124	202	211	133	185
197	Special contribution payable to Assurance Fund on grant of certain applications under this Act as indemnity for imperfect title. (And see s. 45, ante) PART XII.—ACTIONS AND OTHER REMEDIES.	..	..	203	214	..	..
198	Personal immunity of officers under the Act	137	125	204	24	134	220
199	No action of ejectment against registered proprietor except in certain cases	cf. 123	cf. 115	205	C. 192,	cf. 124	cf. 56
200	Upon recovery of land, &c., Court may order cancellation of instrument or entry and substitution of new one	124	128	206	<i>et seq.</i>	138	73
201	Person deprived of land may bring action against person blamable	cf. 126	cf. 117	207	cf. 203,	cf. 125	..
	Except in cases of fraud or error, such person ceases to be liable upon <i>bonâ fide</i> transfer for value	..	117	207	<i>et seq.</i>	125	..
	Where remedy ineffective, damages recoverable from Registrar out of Assurance Fund	127.	117	207	cf. 205	125	cf. 178,
	Value of buildings erected after deprivation to be excluded from calculation of damages	cf. Act of 1877, s. 47	..	207	cf. 209	..	<i>et seq.</i>
202	No action of ejectment, &c., nor for recovery of damages against <i>bonâ fide</i> purchaser for value	126	118	208	207	126	190
203	Applicant or proprietor may summon Commissioner or Registrar to show cause if dissatisfied	cf. 27, 28	107	209	221, 222	110	191,
204	Costs of summons and proceedings under last section .. .. .	..	..	210	..	..	<i>et seq.</i>
205	Action against Registrar for misfeasance, &c., or by person deprived of land and barred of action for recovery	cf. 128	119	211	cf. 208	128	178, 179
	Value of buildings erected after deprivation to be excluded	cf. Act of 1877, s. 47	..	211	cf. 209	..	cf. 186

206	Persons sustaining loss when land brought under Act, or certificate rectified owing to inaccuracy of Crown survey, may recover damages against Assurance Fund, <i>non obstante</i> ss. 201 and 205, <i>supra</i>	..	..	212	..	..	..
207	Additional cases in which action lies against Assurance Fund	..	..	213	..	..	..
208	Person entitled to bring action against Assurance Fund may apply in writing for compensation to Commissioner, and be paid by him	..	..	214	..	..	..
209	One month's notice of action to be served on Registrar	..	..	215	120	..	..
210	Costs may be recovered in name of Registrar	..	..	215	120	..	..
211	Mode of payment out of Assurance Fund	..	..	216	121	..	..
	Limitation of Actions	..	..	217	cf. 126, 127	..	..
	Plaintiff in action for recovery or for damages for deprivation of land nonsuited if deprivation caused by bringing land under Act and he wilfully, &c., omitted to lodge caveat	21	122	217	..	..	..
212	Actions and appeals governed by Rules of Supreme Court. Power to make new rules	..	134	218	..	..	..
213	Obligation to make discovery not affected by Act	..	..	219	..	..	..
	PART XIII. — OFFENCES.	..	..	..	..	..	..
214	Certain Acts to be misdemeanours; punishment thereof	..	..	220	cf. 130	..	..
225	Forgery, &c., to be felony	..	..	221	cf. 142	..	..
216	Punishment of felony	..	..	222	cf. 133	..	..
217	Conviction not to affect civil remedy	..	..	223	cf. 142	..	..
218	Offences prosecuted and penalties recoverable in name of Attorney-General in Supreme Court	..	..	cf. 224	cf. 143	..	..
	PART XIV. — MISCELLANEOUS.	..	..	..	..	..	..
219	Devisee or person having power of appointment may apply to be registered as proprietor by transmission	..	..	225	cf. 89	..	..
220	Application may be advertised, and, if no caveat lodged, applicant registered as proprietor	..	..	226	cf. 89	..	..
221	Remainderman or reversioner may be registered as such	..	..	227	cf. 86	..	..
222	Person claiming title by possession under Statute of limitations may apply to be registered as proprietor	..	..	..	..	..	..
223	Application may be advertised, and, if no caveat lodged, applicant registered as proprietor	..	..	..	..	..	..
224	Contribution by applicant to Assurance Fund	..	..	..	..	..	..
225	Further duty payable to Registrar in such case	..	..	..	..	..	..
226	Upon entry of particulars of marriage of female proprietor, husband may be registered as joint proprietor where land not held to separate use	87	77	228	..	..	..
227	Registration of survivor of joint proprietors	..	..	..	..	..	..
228	Proprietors and transferees of land or interest for the time being to stand in place of previous owners	..	..	229	cf. 87	..	..
229	Action may be brought or defended by beneficiary in name of trustee, if indemnity given	..	..	230	110	..	..
230	Abandonment of right of way may be presumed after twenty years' adverse possession	..	..	..	..	..	..
231	Where building has encroached on road or street in certain towns for twenty years title may be given

COMPARATIVE TABLES OF STATUTES.—TABLE VII.

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Western Australia.	SUBJECT MATTER OF SECTION.	Queens- land.	New South Wales.	Victoria.	Western Australia.	South Australia.	New Zealand.
Act of 1893.							
232	Registrar to give receipts for documents lodged .. ..	..	..	234	..	..	..
233	<i>Lis pendens</i> declared not to affect land under the Act .. ..	..	..	235	250	..	..
234	Trustee of bankrupt entitled to be registered as to land of which bankrupt is proprietor at or after order of adjudication	cf. 86	cf. 75	cf. 236	cf. 170, 171, 180	cf. 76	cf. 115- 117
235	Until trustee registered, bankruptcy of proprietor not to affect dealing by him .. ..	..	..	237	..	..	..
236	Tenant-in-tail under the Act entitled to deal with land as effectually as tenant-in-tail under general law .. ..	..	..	238	..	cf. Act of 1896, s. 7	..
237	Conditions of sale in 26th Schedule to apply in absence of modification or exclusion .. ..	..	..	239	..	..	..
238	Effect of alteration of Forms in Schedules	3	3	240	275	3	212, 215
239	Searching the register	121	103	241	65	106	40
240	Certified copy obtainable and <i>prima facie</i> evidence of contents of instrument	123	102	241	..	105	cf. 39
241	Notices under the Act; how served .. ..	..	..	..	..	..	..
	Saving restrictions imposed on lessees of Crown land .. ..	..	..	..	..	..	..

4. A.G.J.
3/27/00

Dr. A. G. P.
3/27/05.



